

# EXHIBIT

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4           IN RE: NATIONAL PRESCRIPTION § MDL NO. 2804  
5           OPIATE LITIGATION                   §

6   § CASE NO.:  
7   § 1:17-MD-2804

8   §  
9           THIS DOCUMENT RELATES TO:       § JUDGE DAN AARON  
10           "Case Track Nine"               § POLSTER

11

12                   \*\*\*\*\*

13                   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER

14                   CONFIDENTIALITY REVIEW

15                   HYBRID REALTIMED/VIDEOTAPED DEPOSITION OF

16                   DAVID HICKS

17                   JULY 19, 2023

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1                   HYBRID REALTIMED/VIDEOTAPED DEPOSITION OF  
2     DAVID HICKS, produced as a witness at the instance  
3     of the Plaintiff, and duly sworn, was taken in the  
4     above-styled and numbered cause on July 19, 2023,  
5     from 10:17 a.m. to 1:49 p.m., before Karen L. D.  
6     Schoeve, RDR, CRR, RSA, reported by computerized  
7     machine shorthand, pursuant to the Federal Rules of  
8     Civil Procedure and the provisions stated on the  
9     record or attached hereto.

10

11                  REPORTER'S NOTE: Please note that due to the  
12     quality of a Zoom videoconference and transmission  
13     of data, overspeaking can cause audio distortion  
14     which disrupts the process of preparing a  
15     videoconference transcript.

16

17                  Quotation marks are used for clarity and do  
18     not necessarily reflect a direct quote.

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A P P E A R A N C E S

FOR PLAINTIFF TARRANT COUNTY, TEXAS:

JAY M. LICHTER, ESQUIRE  
BARON & BUDD, P.C.  
Encino Plaza  
15910 Ventura Boulevard, Suite 1600  
Encino, California 91436  
D: 818.305.6379  
T: 818.839.2333  
F: 214.520.1181  
jlichter@baronbudd.com

FOR DEFENDANT ALBERTSONS:

PETER S. WAHBY, ESQUIRE  
GREENBERG TRAURIG, LLP  
2200 Ross Avenue, Suite 5200  
Dallas, Texas 75201  
D: 214.665.3662  
T: 214.665.3600  
F: 214.665.3601  
peter.wahby@gtlaw.com

FOR DEFENDANT KROGER:

PAUL L. FRAMPTON, JR., ESQUIRE  
ATKINSON & FRAMPTON, PLLC  
2306 Kanawha Boulevard E  
Charleston, West Virginia 25311  
T: 304.982.7577

ALSO PRESENT:

Colin Coughenour, Videographer  
Litigation Services

CERTIFIED STENOGRAPHIC COURT REPORTER:  
Karen L. D. Schoeve, CRR, RDR, RSA

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We're now on the  
3 record. My name is Colin Coughenour. I'm a  
4 videographer for Golkow Litigation Services.

5 Today's date is July 19th, 2023. The  
6 time is 10:17 a.m.

7 This deposition is being held in  
8 Dallas, Texas, in the matter of Opioid Litigation,  
9 Track 9.

10 The deponent is David Hicks.

11 Would counsel please identify  
12 themselves for the record.

13 MR. LICHTER: Good morning. My name  
14 is Jay Lichter for plaintiff Tarrant County, Texas.

15 MR. WAHBY: Peter Wahby of Greenberg  
16 Traurig for the Albertsons defendants.

17 THE VIDEOGRAPHER: The court reporter  
18 is Karen Schoeve. Will now swear in the witness.

19 MR. LICHTER: Paul Frampton, by the  
20 way, is also here for the Kroger defendants.

21 DAVID HICKS,  
22 having been first duly sworn to tell the truth, the  
23 whole truth, and nothing but the truth, so help him  
24 God, testified as follows:

25



1 EXAMINATION

2 BY MR. LICHTER:

3 Q. Good morning, Mr. Hicks.

4 A. Good morning.

5 Q. Would you please state and spell your name  
6 for the record.

7 A. David Hicks. D-a-v-i-d H-i-c-k-s.

8 Q. And just to go over some basic admonitions  
9 of depositions, I'll be asking you a series of  
10 questions throughout the deposition, and at various  
11 times, your counsel, sitting beside you, may object  
12 after I pose a question.

13 And just so you know, you are  
14 obligated to answer and respond to my questions even  
15 though your counsel objects, unless, of course, your  
16 counsel instructs you not to answer.

17 Does that make sense?

18 A. Yes, sir.

19 Q. And we have a court reporter taking down  
20 what we're saying here, so it's important that we  
21 speak slowly so the court reporter can take down  
22 what we are saying and that we avoid, to the best we  
23 can, talking over each other.

24 Do you understand that?

25 A. Yes.

1           Q.    Okay.  And I may ask you some questions  
2   that call for a "yes" or "no" answer.

3                    Just so you know, responses like  
4   "uh-huh" and "huh-uh" are difficult for the court  
5   reporter to take down.  So to the best you can, I'd  
6   ask that you avoid your responses.

7                    Is that okay?

8           A.    Yes.

9           Q.    Are you taking any medications today that  
10   may impair your ability to give truthful testimony?

11          A.    No.

12          Q.    Throughout the deposition, we'll be taking  
13   breaks.  I'll aim to take a break about every hour.

14                   If, at any time, you would like to  
15   take a break for whatever reason, you can -- you can  
16   let me know.  We can go ahead and take a break.  I  
17   would just ask that we not take a break while a  
18   question is pending.

19                   So to that end, if a question is  
20   pending, you would provide a response, and then we  
21   can go ahead and cut to the break.

22                   Is that okay?

23          A.    Yes.

24          Q.    Have you ever had your deposition taken  
25   before?

1 A. Yes.

2 Q. And how many times?

3 A. Once.

4 Q. When was that?

5 A. 10 years ago.

6 Q. And were you and were you deposed as a  
7 party or as a witness?

8 A. As a witness.

9 Q. Okay. And what kind of case was that?

10 A. A prescription misfilled.

11 Q. And was Albertsons a party to that case?

12 A. I believe it was before the Albertsons  
13 merger.

14 Q. So would that have been Tom Thumb?

15 A. Safeway.

16 Q. Safeway. Okay.

17 Do you remember how that case  
18 resolved?

19 A. I do not.

20 Q. Okay. Was the misfill for an opioid  
21 medication?

22 A. It was not.

23 Q. What medication was it for?

24 MR. WAHBY: Objection; form.

25 A. Amlodipine, blood pressure medication.

1 BY MR. LICHTER:

2 Q. And was that case in Tarrant County?

3 A. The store it was involved in was in  
4 Tarrant County.

5 Q. Do you remember which store that was?

6 A. Yes.

7 Q. Where's that located?

8 A. Grapevine, Texas.

9 Q. Have you done anything to prepare for  
10 today's deposition?

11 MR. WAHBY: Object to the form of the  
12 question to the extent your answer shares  
13 information that you and I discussed. What we  
14 talked about in our time together I'd instruct you  
15 not to answer. But otherwise, you can answer the  
16 question.

17 A. Yes.

18 BY MR. LICHTER:

19 Q. And what have you done?

20 MR. WAHBY: Same objection.

21 Same instruction.

22 A. Met with Peter.

23 Q. Just one time?

24 A. One in-person meeting, one Teams  
25 conference call type meeting.

1 Q. Was anybody else involved in those --  
2 those two meetings?

3 A. Yes.

4 Q. Who else was involved?

5 A. I can't remember everybody's name. I  
6 believe another attorney, Greg, was present. Well,  
7 Greg was present for the in-person meeting.

8 On the Teams call, I believe  
9 Albertsons had one other attorney present, and I  
10 can't recall her name. And I can't recall if one or  
11 two more people just from Peter's team was on.

12 Q. Okay. Do you recall about how long those  
13 meetings lasted?

14 A. Maybe an hour.

15 Q. Did you review -- I guess other than  
16 documents provided by your counsel, did you review  
17 any documents to prepare for today's deposition?

18 MR. WAHBY: Same objection.

19 A. I guess -- can you ask that again?

20 BY MR. LICHTER:

21 Q. Sure. Other than documents that your  
22 counsel may have shown you or provided to you, did  
23 you review any documents to prepare for today's  
24 deposition?

25 A. No.

1 MR. LICHTER: Let's go ahead and have  
2 the first document marked as Exhibit 1.

3 She'll hand that to you after she  
4 marks it.

5 THE COURT REPORTER: I'm going to put  
6 the sticker on later. Sorry. I left it in my  
7 briefcase.

8 MR. LICHTER: Okay. Did you want to  
9 get them now?

10 THE COURT REPORTER: I can.  
11 Let's go off the record.

12 Colin, please.

13 MR. LICHTER: Okay. Can we go off the  
14 record for a minute?

15 THE VIDEOGRAPHER: The time is  
16 10:23 a.m. We are off the record.

17 (A recess was taken from 10:23 a.m. to  
18 10:27 a.m.)

19 (Exhibit 1 marked.)

20 THE VIDEOGRAPHER: The time is  
21 10:27 a.m., and we are on the record.

22 BY MR. LICHTER:

23 Q. Okay. Welcome back. I guess we had just  
24 marked Exhibit 1 when we took a break.

25 And, Mr. Hicks, other than the black

1 box redactions on pages 3 and 4 of this document, is  
2 this a copy of your online LinkedIn profile?

3 A. Yes.

4 Q. Did you prepare the information that's in  
5 this document?

6 A. Yes.

7 Q. Is the information here accurate, as far  
8 as you know?

9 A. Yes.

10 Q. Let's take a look at page 2 of the  
11 document under the "Education" section.

12 It says here you attended the  
13 University of Oklahoma Health Sciences Center from  
14 1993 to 1996; is that correct?

15 A. Yes.

16 Q. And you received a bachelor's degree in  
17 pharmacy from that school in 1996; is that correct?

18 A. Yes.

19 Q. Have you received any other formal  
20 education after high school that isn't listed here?

21 A. No.

22 Q. Have you received any other degrees that  
23 aren't listed here?

24 A. No.

25 Q. Do you currently hold any professional

1 licenses or certifications?

2 A. Pharmacist.

3 Q. For what states?

4 A. Texas.

5 Q. Any others?

6 A. No.

7 Q. And when did you receive your license to  
8 become a pharmacist in Texas?

9 A. 1996.

10 Q. And you're currently a licensed  
11 pharmacist?

12 A. Yes.

13 Q. Looking at the "Experience" section on  
14 pages 1 and 2, that lists your work experience,  
15 correct?

16 A. Yes.

17 Q. And the bottom of page 1 and the top of  
18 page 2, I guess it indicates -- I think part of this  
19 was cut off by the printout, but it indicates you  
20 were a pharmacy manager at Tom Thumb supermarket  
21 from 1997 to 2011 in Plano, Texas; is that right?

22 A. Yes.

23 Q. Was that at a single store?

24 A. Yes.

25 Q. And can you summarize your duties as a



1 pharmacy manager during this time?

2 A. Responsible for the day-to-day operations  
3 of the pharmacy, including being a pharmacist,  
4 filling prescriptions, taking care of customers; and  
5 then the managerial role, as far as managing  
6 inventory, managing personnel, staffing, things like  
7 that.

8 Q. Did you oversee other pharmacists during  
9 this time?

10 A. The -- yes.

11 Q. About how many?

12 A. Over the 13 years I was there, probably  
13 six different staff pharmacists came and went.

14 Q. Did you also oversee techs?

15 A. Yes.

16 Q. About how many?

17 A. I can't remember. 30, maybe.

18 Q. Okay. Again, I think this might have been  
19 cut off by the printout also, but it indicates you  
20 worked as a regional pharmacy manager at Tom Thumb  
21 supermarket in Dallas/Fort Worth from 2011 to 2015;  
22 is that right?

23 A. Yes.

24 Q. And can you describe the area your region  
25 covered?

1 A. Roughly west of DFW Airport.

2 Q. And about how many stores were you in  
3 charge of?

4 A. I believe it was 36. Sometimes more,  
5 sometimes less, depending on store openings and  
6 closings.

7 Q. And can you summarize your duties as a  
8 regional pharmacy manager during this time?

9 A. Area -- as a general area supervisor, as a  
10 manager overseeing my group of 36 stores, providing  
11 support and -- honestly, I don't know how to  
12 describe it. Very all-encompassing, from staffing  
13 to scheduling to customer service support,  
14 operational support.

15 Q. Anything in the area of compliance?

16 A. Yes.

17 Q. Would that be compliance with internal  
18 policies and procedures or federal and state laws?

19 MR. WAHBY: Objection; form.

20 A. Both.

21 BY MR. LICHTER:

22 Q. And are you aware that Albertsons acquired  
23 the Tom Thumb pharmacies owned by Safeway in 2015?

24 A. Yes.

25 Q. Can you explain how that acquisition

1       affected your position in 2015?

2                       MR. WAHBY:  Objection; form.

3           A.    It changed the alignment or arrangement of  
4   stores.  You know, previously, I only was  
5   responsible for Tom Thumb locations.  After the  
6   merger, I had Tom Thumb and Albertsons locations in  
7   the DFW area.  My grouping of stores changed, but it  
8   was basically the same job.

9   BY MR. LICHTER:

10          Q.   Same duties, you mean?

11          A.   Same duties.  Same general duties, yes.

12          Q.   It says you worked as a division pharmacy  
13   manager at Albertsons from 2015 to the present; is  
14   that right?

15          A.   Yes.

16          Q.   That's your current position?

17          A.   Yes.  The two companies kind of had  
18   different names for the same job.

19          Q.   Okay.  Can you describe the area your  
20   region currently covers?

21          A.   I currently cover north -- northern  
22   suburbs in the Dallas/Fort Worth metroplex.  Some  
23   Dallas stores -- just the north half of the  
24   metroplex -- or portion of the metroplex.

25          Q.   Do you know how many stores you're in

1 charge of currently?

2 A. 32.

3 Q. All of them are located in Texas?

4 A. Yes.

5 Q. Do you know how many are located in  
6 Tarrant County?

7 A. Four.

8 Q. Do you know those store numbers?

9 A. Yes.

10 Q. Can you tell them to me?

11 A. 1789 -- no. 1780. 2580. 3625. 3854.

12 Q. And those four stores in Tarrant County,  
13 have you overseen those stores consistently since  
14 2015?

15 A. Not all of them.

16 Q. Which ones have you?

17 A. 25 -- 1780. 2580. I believe there was  
18 a -- it was -- consistently, the other two? No. I  
19 believe there was a break with 3625. I really ...

20 Q. Do you know when that break was?

21 A. Not specifically.

22 Q. Do you know about how long that break  
23 lasted?

24 A. About a year.

25 Q. Do you know why there was a break?

1           A.    From time to time, the company rearranges  
2    districts and store alignment, and we -- just -- the  
3    boundaries of our territory just shift.

4           Q.    Is that the same for 3854?

5           A.    3854, I just became responsible for about  
6    a month ago.

7           Q.    Other than those four locations, are there  
8    any other locations in Tarrant County that you  
9    oversaw while working for Albertsons?

10          A.    Yes.

11          Q.    Which ones?

12          A.    I -- honestly, I would have to, like, see  
13    a list or a map because I can't -- I mean, I could  
14    start to number some stores I can recall, but I  
15    don't know that it would be complete.

16          Q.    Okay. Do you know about how many  
17    additional stores you would have overseen in Tarrant  
18    County besides the four we mentioned?

19          A.    Maybe a dozen.

20          Q.    Okay. You mentioned your duties as a  
21    division pharmacy manager at Albertsons were  
22    basically the same as a regional pharmacy manager  
23    for Tom Thumb?

24          A.    Yes.

25          Q.    Are there any specific requirements an

1 employee needs to meet to become a division pharmacy  
2 manager for Albertsons?

3 A. I know we have to be a licensed  
4 pharmacist.

5 Q. Do you know if those licenses have to be  
6 active?

7 A. I think so.

8 Q. Anything else?

9 A. Honestly, I don't know if there are  
10 specific requirements the company currently looks  
11 for.

12 Q. Okay. And who do you currently report to?

13 A. Julie Spier.

14 Q. And what's her title?

15 A. Director of pharmacy operations.

16 Q. Have you reported to her since 2015?

17 A. Yes.

18 Q. Have you held any other positions or roles  
19 with Albertsons at any time?

20 A. Before I was a manager, I was a relief  
21 pharmacist in 1996 and 1997.

22 Q. Is that essentially a floater pharmacist?

23 A. Yes.

24 Q. Anything else?

25 A. No.

1 Q. As far as you know, do each of the  
2 pharmacies Albertsons owns in Tarrant County follow  
3 the same dispensing policies and procedures set by  
4 Albertsons?

5 MR. WAHBY: Objection; form.

6 A. Yes.

7 BY MR. LICHTER:

8 Q. Are those policies and procedures set  
9 nationally by the company, or are those different  
10 from region to region?

11 MR. WAHBY: Objection; form.

12 A. Yes, they are set nationally.

13 BY MR. LICHTER:

14 Q. Do you know which other division pharmacy  
15 managers are responsible for the other locations in  
16 Tarrant County?

17 A. Yes.

18 Q. Who are they?

19 A. Don Bowman.

20 Q. Anyone else?

21 A. I don't believe so.

22 Q. Are you aware of any other division  
23 pharmacy managers responsible for stores in Tarrant  
24 County if you're not responsible for them anymore?

25 A. Can you repeat that?

1 Q. Do you know any prior division pharmacy  
2 managers for stores located in Tarrant County?

3 A. Yes.

4 Q. Who are they?

5 A. Currently with the company? Or ever?

6 Q. Both.

7 MR. WAHBY: Objection; form.

8 A. Kim Parta.

9 BY MR. LICHTER:

10 Q. Is she currently with the company?

11 A. She is currently with the company.

12 Q. Anyone else?

13 A. There was a guy, DJ Adams.

14 Q. He's currently with the company?

15 A. I don't believe so. I don't know for  
16 sure.

17 There's somebody named Nicole. I  
18 can't remember her last name.

19 Q. Is she currently with the company?

20 A. No.

21 Q. Anyone else you can recall?

22 A. I know the guy who had, like, my job  
23 before me.

24 Q. Who was that?

25 A. But that wasn't with Albertsons.



1 Q. What was his name?

2 A. Rob Wheeler.

3 Q. And that was for Tom Thumb?

4 A. Yes.

5 Q. And he doesn't work for Albertsons?

6 A. No, no.

7 Q. Anyone else?

8 A. How far do you want me to go back?

9 Q. Maybe since 2015?

10 A. Since 2015? No.

11 Q. Okay. How about prior to that? Since  
12 2006?

13 MR. WAHBY: Objection; form.

14 A. Danny Graham.

15 BY MR. LICHTER:

16 Q. Did he work for Albertsons?

17 A. Safeway.

18 Q. He never worked for Albertsons?

19 A. Not to my knowledge.

20 Q. Anyone else you can recall that worked for  
21 Albertsons?

22 A. No.

23 Q. Either currently or previously?

24 A. No.

25 Q. And do the different division pharmacy

1 managers for Albertsons often interact with each  
2 other?

3 A. Yes.

4 Q. And under what circumstances do they  
5 typically interact?

6 MR. WAHBY: Objection; form.

7 A. We have weekly meetings. Since DFW is --  
8 we kind of view this as one market. And so we have  
9 stores close to each other. We share a float staff  
10 or relief staff and corporate admin. So we interact  
11 over staffing, hiring decisions, sometimes HR  
12 decisions.

13 BY MR. LICHTER:

14 Q. Other than things like staffing and  
15 hiring, is anything else typically discussed at the  
16 weekly meetings?

17 A. Yeah. Everything. Priorities for the  
18 week, company initiatives, goals, expectations.

19 Q. Do pharmacists communicate directly with  
20 their division pharmacy managers, or do they usually  
21 communicate with pharmacy managers themselves?

22 MR. WAHBY: Objection; form.

23 A. I don't understand. Say that again.

24 BY MR. LICHTER:

25 Q. Fair. Do pharmacists typically

1       communicate directly with their division pharmacy  
2       managers?

3             A.     Yeah.

4             Q.     Okay. Under what circumstances do they  
5       usually communicate with them?

6                   MR. WAHBY: Objection; form.

7             A.     Just daily needs of whatever's going on in  
8       the pharmacy. If they need assistance, either  
9       with -- just questions, you know, customer service  
10      issues, staffing issues, compliance issues or  
11      questions, general concerns, technology issues.

12            BY MR. LICHTER:

13            Q.     Okay. And how do pharmacists typically  
14      communicate with the DPMs?

15            A.     Phone calls, e-mails.

16            Q.     Is one more common than the other?

17            A.     Depends on the urgency.

18            Q.     For more urgent issues, is a phone  
19      typically used?

20                   MR. WAHBY: Objection; form.

21            A.     I won't say typically used. I would say  
22      if somebody needs my attention right away, it  
23      typically is a phone call. If they got in a car  
24      wreck on the way to work, they might not be able to  
25      e-mail me at the time, so ...

1 BY MR. LICHTER:

2 Q. And that's something a pharmacist would  
3 reach out to you to discuss rather than the pharmacy  
4 manager?

5 MR. WAHBY: Objection; form.

6 A. Yes.

7 BY MR. LICHTER:

8 Q. Are you familiar with the Texas State  
9 Board of Pharmacy?

10 A. Yes.

11 Q. Okay. Do they generally oversee pharmacy  
12 regulation in the state of Texas?

13 A. Yes.

14 Q. And does the Texas Board of Pharmacy ever  
15 send anything like notices or alerts to Albertsons  
16 regarding certain patients or prescribers?

17 A. I don't recall seeing anything from them  
18 about -- about that.

19 MR. LICHTER: Let's go ahead and have  
20 the next document marked as Exhibit 2.

21 (Exhibit 2 marked.)

22 BY MR. LICHTER:

23 Q. For the record --

24 (Phone interruption.)

25 BY MR. LICHTER:

1           Q.     For the record, this document is Bates  
2     numbered ALB-MDLCT9-00347523.

3                     Have you seen this document before?

4           A.     (Examined exhibit.) It looks like I wrote  
5     it, so I'm sure I saw it at the time.

6           Q.     Have you seen it within the last few weeks  
7     or months?

8           A.     No.

9           Q.     Is this --

10          A.     (Coughed.) Excuse me.

11          Q.     Sure.

12                     Is this an August 6th, 2011, e-mail  
13     string between you and other Albertsons employees?

14          A.     I -- yes. Well, this wasn't Albertsons at  
15     the time.

16          Q.     Okay. This was Tom Thumb?

17          A.     Yes.

18          Q.     I guess the top e-mail, though, is from  
19     you to Julie Spier at her Albertsons.com e-mail  
20     address; is that right?

21          A.     It appears as such. We -- again, we  
22     weren't Albertsons in 2011, so I think that's her  
23     current e-mail. But ...

24          Q.     So in 2011, did Julie Spier work for  
25     Albertsons or for Tom Thumb?

1 MR. WAHBY: Objection; form.

2 A. In 2011, Tom Thumb was part of the Safeway  
3 grocery chain.

4 BY MR. LICHTER:

5 Q. I'm asking about Julie Spier, though,  
6 given that --

7 A. She worked for Safeway.

8 Q. Not for Albertsons?

9 A. Not for Albertsons.

10 Q. Even though it indicates at the top that  
11 you were e-mailing her at an Albertsons e-mail  
12 address?

13 A. Yeah, I don't know how that happened.

14 Q. Can you look at the e-mail at the bottom  
15 of the page?

16 A. (Complied.)

17 Q. And the bottom e-mail appears to be sent  
18 from the store manager of Store 3563 who was  
19 identified at the bottom as Clarence Ennis.

20 Does that look correct?

21 A. Yes.

22 Q. And Store 3563 is located in Texas; is  
23 that right?

24 A. Yes.

25 Q. Do you know where in Texas?

1           A.     Duncanville. I believe that's Dallas  
2     County.

3           Q.     And would Clarence Ennis be the store  
4     manager for 3563?

5           A.     As I recall, he was an assistant store  
6     manager, but I am not certain of that.

7           Q.     Okay. The e-mail was sent to you, Jackie  
8     Tschosik, and John Mix; is that right?

9           A.     Yes.

10          Q.     Do you recall what their job titles were  
11     at this time?

12          A.     Jackie Tschosik worked in our HR  
13     department. John Mix was a district manager for the  
14     total store.

15          Q.     And both of them worked for Safeway at  
16     this time?

17          A.     Safeway.

18          Q.     And this e-mail was sent on August 26th,  
19     2011; is that right?

20          A.     It appears so.

21          Q.     Okay. And the e-mail says, "Mr. Hicks, I  
22     just went over to discuss O/R with Marc. I asked  
23     him if he had a chance to look at hours, He stated  
24     he was to [sic] busy. I tried to ask him that  
25     looking at the script count so far he is going to

1 miss 100 O/R by 17 hours or more again this week."

2 Did I read that okay?

3 A. Yes.

4 Q. What does O/R stand for?

5 MR. WAHBY: Objection; form.

6 A. Operating ratio.

7 BY MR. LICHTER:

8 Q. What does that mean?

9 A. It was a labor ratio for stores to  
10 schedule based off their prescription volume and the  
11 needs of their technician staffing.

12 MR. WAHBY: Objection; form.

13 Mr. Videographer, I want to make sure  
14 that this recording -- this screen-in-screen,  
15 there's two different recordings, right? One, the  
16 video, and then you have the Zoom.

17 THE VIDEOGRAPHER: (Nodded head.)

18 MR. WAHBY: So the main video -- the  
19 recording is not gonna look like that with this --  
20 with this demonstrative created with the witness,  
21 correct?

22 THE VIDEOGRAPHER: Yes, sir. I'm  
23 recording the feeds all separately.

24 MR. WAHBY: Okay. Thank you.

25 Go ahead.



1 BY MR. LICHTER:

2 Q. Do you know who Marc is that's referenced  
3 here in this e-mail?

4 A. Marc was our pharmacy manager.

5 Q. For Store 3563?

6 A. Yes.

7 Q. Do you know what it means to "miss 100 O/R  
8 by 17 hours"?

9 A. Yes.

10 Q. What does that mean?

11 A. The goal was to hit a 100 percent and  
12 if -- and the store was overspending technician  
13 hours by 17 hours.

14 Q. When you say "100 percent," what is that  
15 measuring?

16 A. Hours used.

17 Q. So does this mean, then, that -- that this  
18 store missed its 100 percent goal by 17 hours?

19 MR. WAHBY: Objection; form.

20 A. Its 100 percent goal by 17 hours, yes.

21 BY MR. LICHTER:

22 Q. Okay. And the e-mail continues. It says,  
23 "He handed me a slip of paper stating 'Patient  
24 safety is our responsibility and if additional time  
25 is required, it is acceptable.' He told me this is

1 not up for date, then walked away."

2 Did I read that correctly?

3 A. Yes.

4 Q. The e-mail continues, "Mr. Hicks, we  
5 understand that RX is only required to hit a 100  
6 O/R, which puts more pressure on the other  
7 departments to make up the difference and if I can't  
8 count on my RX manager to at least aim for that goal  
9 then I have an issue that we need to resolve."

10 Did I read that okay?

11 A. Yes.

12 Q. And what does it mean that O/R is only  
13 required -- sorry -- that RX is only required to hit  
14 a 100 O/R?

15 MR. WAHBY: Objection; form.

16 A. As I recall, from time to time, they  
17 would -- I guess, for lack of a better way to  
18 describe it, they would tighten the screws on how  
19 much labor a store could use, and they would adjust  
20 other departments or hold other departments to a  
21 stricter standard, and they may have to hit  
22 105 percent or 108 percent of their OR or of their  
23 labor allotment. And pharmacy was always excluded  
24 from those stricter rules or stricter tightening of  
25 the screws.

1 BY MR. LICHTER:

2 Q. Was that consistent with Albertsons'  
3 policies once you joined the Albertsons stores?

4 A. Albertsons had a different metrics by  
5 which they measured labor.

6 Q. What was Albertsons's metric?

7 A. They would go off a wage percent.

8 Q. Can you explain what that means?

9 A. Albertsons stores are allotted a certain  
10 percentage of their sales to be spent on labor.

11 Q. Do you know what percent that is?

12 A. It varies store by store, based off  
13 location.

14 Q. And going back to the e-mail, do you know  
15 why this would put more pressure on other  
16 departments?

17 A. The -- if I recall correctly, a store has  
18 a labor budget. So if one department used more than  
19 their allotment, then that would have to come out of  
20 another department.

21 Q. And you said this policy excluded pharmacy  
22 staff?

23 MR. WAHBY: Objection; form.

24 BY MR. LICHTER:

25 Q. Or no?

1           A.     The pharmacy has a labor budget.

2     The store has a labor budget.   Every department has  
3     a labor budget.   When they get a little more strict  
4     with the budget or when they start cutting the  
5     budget, they cut other departments and typically not  
6     pharmacy.

7           Q.     Do you know if this issue discussed in  
8     these e-mails ever got resolved?

9                     MR. WAHBY:   Objection; form.

10          A.     I don't recall.

11     BY MR. LICHTER:

12          Q.     Do you recall why you're forwarding this  
13     e-mail to Julie Spier on August 26th, 2011?

14          A.     I don't.

15          Q.     Do you recall if she did anything or took  
16     any action in response to receiving this e-mail?

17          A.     I don't.

18          Q.     And you don't recall if Julie Spier worked  
19     for Albertsons or Safeway in 2011?

20          A.     She worked for Safeway in 2011.

21          Q.     Even though she has an Albertsons e-mail  
22     address here, correct?

23          A.     Yeah.   I ...

24                     MR. WAHBY:   Objection; form.

25          A.     I know we did not merge as a company until

1       2015. We both worked for Tom Thumb/Safeway in 2011.

2                   Maybe technology folks could answer  
3       why her e-mail address changed.

4                   MR. LICHTER: Let's set that one aside  
5       and have the next document marked as Exhibit 3.

6                   (Exhibit 3 marked.)

7                   MR. LICHTER: Just for the record,  
8       Exhibit 3 is Bates numbered ALB-MDLCT9-00350447.

9       BY MR. LICHTER:

10       Q. Have you seen this document before?

11       A. Looks like I was involved in the e-mail  
12       chain, but I -- so I'm sure I saw it back in October  
13       of 2016.

14       Q. You don't recall seeing this within the  
15       last few months?

16       A. No.

17       Q. Is this an e-mail string between you and  
18       other Albertsons employees from October of 2016?

19       A. Yes.

20       Q. Let me start with the bottom of the first  
21       page here, which appears to be an e-mail that goes  
22       on to the second page.

23                   Do you see that?

24       A. Yes.

25       Q. Okay. Is this an e-mail from Christina at

1 Pharmacy Number 2588 to you on October 28th, 2016?

2 A. Yes.

3 Q. And are you aware that Pharmacy

4 Number 2588 is located in Texas?

5 A. Yes.

6 Q. Do you know where in Texas that pharmacy  
7 is located?

8 A. It used to be located in Coppell, Texas,  
9 which I believe is in Dallas County.

10 Q. And it's no longer located there?

11 A. It's a closed --

12 MR. WAHBY: Objection; form.

13 A. It's a closed location.

14 BY MR. LICHTER:

15 Q. Do you know about when it closed?

16 A. Several years ago. I don't know that I --  
17 I don't recall when.

18 Q. Do you recall why it closed?

19 A. No. That was a grocery decision.

20 Q. And would this have been a pharmacy that  
21 you oversaw at this time in 2016?

22 A. I believe so, yes.

23 Q. And do you know Christina's last name?

24 A. Tran, T-r-a-n.

25 Q. Do you recall what her position was at

1       this time?

2           A.     I think she was the staff pharmacist.

3           Q.     The top of the second page, Christina  
4       writes to you, "David I have a customer that is  
5       requesting we order a different manufacturer of her  
6       hydrocodone 10/325. The Mallinckrodt makes her sick  
7       she says." And she gives some info on the  
8       hydrocodone, and she says she needs three bottles.  
9       "Let me know if this is something we can do"; is  
10      that right?

11          A.     Yes.

12          Q.     Hydrocodone, that's a Schedule 2  
13      controlled substance, correct?

14          A.     Yes.

15          Q.     And that's an opioid?

16          A.     Yes.

17          Q.     In your experience, when a customer  
18      requests a Schedule 2 drug from a certain  
19      manufacturer for certain brands, is that considered  
20      a red flag?

21          A.     Yes.

22          Q.     Okay. And what's a red flag?

23          A.     I guess a -- what's a red flag? It would  
24      be something pertaining to a controlled substance  
25      prescription that might indicate it's --

1                   I apologize. I just don't know how to  
2   define what red flags are, just kind of identifying  
3   what they are.

4           Q.   Can I help you out?

5           A.   Sure.

6           Q.   Might it indicate that a prescription is  
7   not going to be used for a legitimate medical  
8   purpose?

9           A.   I think that -- I think that stigmatizes  
10   all of them. So might it be? Yes. But -- yes.

11          Q.   Do you agree with that definition? If you  
12   don't, feel free to provide your own.

13                   I just want to know what your  
14   understanding of a red flag is.

15          A.   I would say -- yeah, a red flag would be  
16   just something on the prescription that indicates it  
17   either -- that there might be a problem with it.  
18   And however we define problem, be that -- I don't  
19   want to say not necessarily for legitimate medical  
20   purpose because there are numerous red flags.

21                   The majority of them -- but I'd say  
22   the majority of prescriptions are still for  
23   legitimate medical purposes, even if a red flag is  
24   present.

25          Q.   Okay. So is it fair to say a red flag can



1       indicate the potential -- just the potential that  
2       the prescription was not issued for a legitimate  
3       medical purpose?

4                       MR. WAHBY:  Objection; form.

5               A.    Yes.  Sure.

6       BY MR. LICHTER:

7               Q.    Do you agree with that definition?

8               A.    Yes.

9               Q.    Okay.  And you mentioned that a request  
10       like this that we're seeing here can be considered a  
11       red flag, correct?

12              A.    Yes.

13              Q.    Okay.  Why can that be considered a red  
14       flag?

15              A.    I -- it just seems universally on the list  
16       of red flags when somebody requests a certain  
17       product or a certain brand that -- I don't know.  
18       It's -- that just always seems to be one of the red  
19       flags.

20              Q.    Okay.  Let's go back to the first page of  
21       the document here, and we can look at the middle  
22       e-mail.

23              A.    (Complied.)

24              Q.    And here this e-mail doesn't say  
25       Christiana -- or --

1 A. Christina.

2 Q. Christina -- sorry -- at the bottom, but  
3 the content suggests it's from Christina to you, and  
4 sent on October 30, 2016.

5 Do you agree with that?

6 MR. WAHBY: Objection; form.

7 A. Yes.

8 BY MR. LICHTER:

9 Q. And the e-mail says, "The prescription is  
10 for \$150 per month."

11 Do you see that?

12 A. Yes.

13 Q. Does that mean 150 hydrocodone pills per  
14 month?

15 A. I believe so. That's the way I interpret  
16 it.

17 Q. Yeah. And in your experience, when a  
18 customer requests 150 hydrocodone pills in a month,  
19 is that considered a red flag?

20 MR. WAHBY: Objection; form.

21 A. I believe so. Doing the math on the MME,  
22 that would be a red flag.

23 BY MR. LICHTER:

24 Q. When you say "based on the MME," does that  
25 mean the MME for this amount of pills would be

1 unusually high?

2 A. It would be -- I don't want to say  
3 unusually high.

4 It would be -- anything over 50 MMEs  
5 is deemed to be -- I believe the CDC or maybe the  
6 DEA -- I can't remember who specifically made that  
7 indication, but anything over 50 MMEs would be  
8 something that a pharmacist would express caution  
9 on.

10 Q. Anything over 50, you said?

11 A. I believe that's the standard, yes.

12 Q. And "MME" stands for?

13 A. Morphine milliequivalents.

14 Q. Morphine milligram equivalent; is that  
15 right?

16 A. Morphine milliequivalents.

17 Q. Milli? Is "milli" short for milligram?

18 MR. WAHBY: Objection; form.

19 A. I don't know.

20 BY MR. LICHTER:

21 Q. Okay. You said you did the math in your  
22 head converting the 150 hydrocodone pills to MME.

23 Do you know what that MME would  
24 translate it to?

25 A. I believe it would be 50.

1 Q. And do you know the reasoning behind  
2 designating that amount of MME as a red flag?

3 A. No.

4 Q. Based on your experience as a licensed  
5 pharmacist, you don't have any idea why an MME of  
6 that measure would be considered a red flag?

7 MR. WAHBY: Objection; form.

8 A. I think the greater the usage, the greater  
9 the chance of dependence or abuse.

10 BY MR. LICHTER:

11 Q. Okay. And then the middle paragraph here,  
12 that same e-mail.

13 Christina says, "She is a new customer  
14 that gets chronic pain meds every month."

15 In your experience, is the fact that  
16 the patient is a new customer seeking this volume of  
17 hydrocodone also a red flag?

18 A. I'd need more information. Just being a  
19 new patient, I don't think would be a red flag.

20 Q. And not a new patient seeking this volume  
21 of hydrocodone? That wouldn't give you enough  
22 information?

23 MR. WAHBY: Objection; form.

24 A. No.

25 BY MR. LICHTER:

1           Q.    And look at the top e-mail on the first  
2   page.

3                   This e-mail is from you to Christina  
4   on October 30, 2016; is that right?

5           A.    Yes.

6           Q.    And you write, "I basically boil it down  
7   to 'is she a good customer?' If she's new to us  
8   then we can't really say. I don't like that she  
9   claims we gave her something that we didn't.  
10   Narcotics and hydrocodone special requests really  
11   concern me. I will have to trust your judgment on  
12   what you want to do. At the end of the day it is  
13   about being profitable and we want to do the 500  
14   count bottle. As long as we are profitable then I  
15   will approve."

16                   Did I read that okay?

17           A.    Yes.

18           Q.    Okay. Why do narcotics and hydrocodone  
19   special requests really concern you?

20           A.    I would say -- I would say this is more  
21   about any generic override.

22                   You've identified one specifically  
23   related to hydrocodone, but as a practice, I have to  
24   approve all override requests for any generic  
25   medication which is not on the company-preferred

1 list.

2 So the back-and-forth, as I recall,  
3 from this e-mail is also about the cost of the  
4 hydrocodone that she was wanting us to order. This  
5 brand was significantly more expensive and would  
6 result in us selling the medication at a loss.

7 So the back-and-forth about a new  
8 customer and those sorts of things would come down  
9 to -- if I have a new customer that we haven't  
10 established a business relationship with and I'm  
11 immediately taking a loss on filling their  
12 prescription, I don't like to do that. We generally  
13 don't want to do that.

14 We would want to steer them to our  
15 preferred item, which would be our profitable item,  
16 regardless of hydrocodone or blood pressure  
17 medication.

18 Q. Okay.

19 A. So -- but if she is a customer that we've  
20 established a relationship with, we know her  
21 history, we know her -- her, you know -- and she's  
22 getting all of her medications from us and she's  
23 even buying all of her milk and eggs and bread from  
24 us, then -- and we've established her as a normal  
25 customer, then we may look at this as

1 "Therapeutically, does she need a different  
2 medication because the product we normally offer her  
3 makes her ill or sick or upset of stomach?" So can  
4 we provide her with another product that would  
5 clinically benefit her? Because she gets the  
6 benefit of taking a medication without a side effect  
7 of making her ill.

8 Q. Okay. So when you write here, "Narcotics  
9 and hydrocodone special requests really concern me,"  
10 your concern, then, is about profits as opposed to  
11 the legitimacy or illegitimacy of the prescription  
12 itself?

13 A. No. I'm concerned about both.

14 Q. Okay. And do -- are special requests for  
15 narcotics and hydrocodone -- as we discussed, do you  
16 agree that that's a red flag for that prescription?

17 A. That is -- seems to be universally  
18 considered a red flag.

19 Q. And do you personally consider it a red  
20 flag?

21 A. Yeah, I won't -- I won't argue with the  
22 experts on that.

23 Q. Okay. And when you say, "At the end of  
24 the day it is about being profitable," is that a  
25 priority you developed on your own, or does that

1 reflect a broader Albertsons policy for its  
2 dispensing?

3 A. I think that's kind of a universal  
4 business practice, to be profitable.

5 Q. So does that mean it's an Albertsons  
6 policy, as a business?

7 MR. WAHBY: Objection; form.

8 A. I mean, it's not a -- it's not a hard stop  
9 because we do still have the ability to make a  
10 decision. I'm still given the liberty to  
11 potentially order a more expensive product and sell  
12 it at a loss.

13 BY MR. LICHTER:

14 Q. I get that, and I understand it might not  
15 be a hard stop.

16 I'm asking about this line: "At the  
17 end of the day it is about being profitable." If  
18 that's -- if that's something that Albertsons handed  
19 down to you as a -- as a businesses policy, or if  
20 that's something that you independently developed  
21 and ran with as a division pharmacy manager?

22 MR. WAHBY: Objection; form.

23 A. I don't recall. I -- that may be me  
24 making a -- talking through the scenario with -- or  
25 working through a scenario with this -- in this



1 individual instance.

2 BY MR. LICHTER:

3 Q. And do you know how this issue was  
4 ultimately resolved?

5 A. I don't recall. And it appears, even  
6 looking through this, as we're making this decision,  
7 we're evaluating the pricing of different sized  
8 bottles, and buying it in different quantities may  
9 have been more profitable, which may have helped  
10 make that decision. But I don't remember how we --  
11 how this ended up.

12 Q. Okay. Do you know if Albertsons ever  
13 blocked this patient from receiving further opioid  
14 prescriptions?

15 A. Who's the patient?

16 Q. The patient discussed on the second page  
17 that's requesting the different manufacturer for the  
18 opioid prescriptions.

19 A. Yeah, but I have -- I have no idea who  
20 this patient is to know what we ever did with them.

21 Q. You don't know what the context if there  
22 was any sort of block on this patient at all?

23 MR. WAHBY: Objection; form.

24 A. I have no idea.

25 BY MR. LICHTER:

1 Q. Are you aware of any instances in which  
2 Albertsons blocked specific patients from receiving  
3 opioid prescriptions?

4 MR. WAHBY: Objection; form.

5 A. I can't recall.

6 BY MR. LICHTER:

7 Q. To your knowledge, is that something that  
8 Albertsons does?

9 MR. WAHBY: Objection; form.

10 A. As a corporate practice --

11 BY MR. LICHTER:

12 Q. Yes.

13 A. -- or as individual pharmacists?

14 Q. As a corporate pharmacist.

15 A. I don't recall this occurring. I don't  
16 know that it -- if it has or hasn't. I don't  
17 remember seeing it.

18 Q. Do you know if Albertsons ever flagged  
19 this patient in the system for other pharmacists to  
20 keep a close eye on?

21 A. I don't know.

22 MR. WAHBY: Objection; form.

23 BY MR. LICHTER:

24 Q. Is that something that Albertsons  
25 typically did?

1 MR. WAHBY: Objection; form.

2 A. Not that I recall.

3 BY MR. LICHTER:

4 Q. Is that something that Albertsons ever did  
5 that you can recall?

6 MR. WAHBY: Objection; form.

7 A. Not that -- I don't -- not that I recall.

8 BY MR. LICHTER:

9 Q. Okay. Do you know if Albertsons ever put  
10 this patient on a list for future tracking or  
11 monitoring on the corporate level, anything like  
12 that?

13 MR. WAHBY: Objection; form.

14 A. I don't know.

15 MR. LICHTER: Go ahead and set this  
16 document aside.

17 I think we've gone for about an hour.

18 We can go ahead and take a 10-minute  
19 break if everybody is --

20 MR. WAHBY: Do you want to risk that?

21 MR. LICHTER: I think we'll go ahead  
22 and give it a try.

23 THE VIDEOGRAPHER: The time is

24 11:18 a.m., and we are off the record.

25 (A recess was taken from 11:18 a.m. to

1 11:30 a.m.)

2 THE VIDEOGRAPHER: The time is

3 11:30 a.m., and we're back on the record.

4 MR. LICHTER: Welcome back, everyone.

5 If we can have the next document

6 marked as Exhibit 4.

7 (Exhibit 4 marked.)

8 MR. LICHTER: For the record, this

9 document is Bates numbered ALB-MDLCT9-00351916.

10 BY MR. LICHTER:

11 Q. I added some highlighting and colored text  
12 on the second page of this document, but outside of  
13 that, have you seen this document before?

14 A. I don't remember, but -- yeah.

15 Q. You haven't seen it within the last few  
16 months?

17 A. No.

18 Q. Is this a December 27, 2016, e-mail string  
19 between you and Rahul Gandhi?

20 A. Yes.

21 Q. Based on his e-mail signature, looks  
22 Mr. Gandhi works at Albertsons Pharmacy Number 4234  
23 in McKinney, Texas; is that right?

24 A. Yes.

25 Q. And do you know what Mr. Gandhi's position

1 was at this time?

2 A. Pharmacy manager.

3 Q. It starts on the e-mail at the bottom of  
4 the second page, page ending in Bates 917.

5 It looks like Mr. Gandhi writes to you  
6 on December 26th, 2016; is that right?

7 A. Yes.

8 Q. And he writes, "Hi David, Can you please  
9 override the McKesson order for us, the patient only  
10 want the HiTech brand Promethazine/Codeine syrup, he  
11 and his wife both take it and they say any other  
12 brand doesn't work for them. They buy all of their  
13 prescriptions from us and some of them are Hi [sic]  
14 priced too."

15 Did I read that okay?

16 A. Yes.

17 Q. Can you explain the context of  
18 Mr. Gandhi's request for you to override the  
19 McKesson order?

20 MR. WAHBY: Objection; form.

21 Object to the exhibit.

22 A. Similar to the last exhibit, he's  
23 requesting we order a nonpreferred item.

24 BY MR. LICHTER:

25 Q. And is promethazine/codeine syrup an

1       opioid?

2           A.     Yes.

3           Q.     Okay.  And we mentioned this before, but  
4       in your experience, when a patient requests a  
5       specific brand or manufacturer for an opioid  
6       medication, that's considered a red flag, correct?

7           A.     Yes.

8           Q.     In your experience, when multiple people  
9       in the same house, like a husband and wife, both  
10      request the same medication like they're doing here,  
11      is that considered a red flag?

12          A.     Yes.

13          Q.     Why?

14          A.     I don't know.  It's just one of those.

15          Q.     Okay.

16          A.     It's on every list that that's a red flag.

17          Q.     Based on your training and experience as a  
18      pharmacist, you don't have any reason why that might  
19      be the case?

20                   MR. WAHBY:  Objection; form.

21          A.     No.

22      BY MR. LICHTER:

23          Q.     How about when multiple people in the same  
24      house take the same opioid medication, and both  
25      request a specific brand or manufacturer for that

1 medication?

2 Is that also a red flag?

3 MR. WAHBY: Objection; form.

4 BY MR. LICHTER:

5 Q. Combination of red flags?

6 MR. WAHBY: Objection; form.

7 A. Yes.

8 BY MR. LICHTER:

9 Q. Looks like you respond to Mr. Gandhi's  
10 e-mail right above that on December 26, 2016.

11 Do you see that?

12 A. Yes.

13 Q. And you write, "So this is a highly abused  
14 medication and highly sought after product. Fax me  
15 a copy of their PMP so I can review it."

16 Did I read that okay?

17 A. Yes.

18 Q. Okay. So according to your mail, this  
19 type medication would also be considered a red flag,  
20 correct?

21 A. More specifically, the brand they were  
22 asking for.

23 Q. The specific brand is highly abused?

24 A. Yes.

25 Q. And the specific brand is highly sought

1 after?

2 A. This -- well, yes. This specific brand  
3 was a purple -- or grape-flavored/colored liquid.

4 Q. Um-hum.

5 A. That became very popular, kind of -- I  
6 don't know how to describe it. It kind of -- it  
7 developed a following and -- it became the preferred  
8 product. For some reason, several manufacturers  
9 made it. There was -- from what I recall, there was  
10 a green version which people didn't like, but there  
11 was also a purple version that was popularized  
12 through song and through culture, that became the  
13 preferred product for people to ask for.

14 Q. Was it preferred among people who abused  
15 prescription medications?

16 MR. WAHBY: Objection; form.

17 BY MR. LICHTER:

18 Q. Who was it popular among?

19 MR. WAHBY: Objection; form.

20 A. I mean, when -- I don't know what -- I  
21 don't know there was a specific person. Maybe  
22 younger, sometimes more urban --

23 BY MR. LICHTER:

24 Q. Okay.

25 A. -- clientele. There was a rap song about



1       it, so it kind of became what people wanted.

2           Q.     Okay.

3           A.     So we did try to limit its availability.

4       And in this case, rather than just ordering it and  
5       giving them what they wanted, we wanted them to --  
6       wanted to scrutinize it a little bit closer.

7           Q.     Okay. And you ask him in your e-mail to  
8       "Fax me a copy of their PMP"?

9           A.     Um-hum.

10          Q.     And the PMP or PDMP, is that the  
11       prescription drug monitoring program for the state  
12       of Texas?

13          A.     Yes.

14          Q.     Can you explain what that is?

15          A.     Pharmacies submit their controlled  
16       substance dispensings to a -- I believe it's watched  
17       by the State Board of Pharmacy, and there's a --  
18       kind of a State database of all controlled substance  
19       dispensings.

20          Q.     So the State PDMP maintains these  
21       submissions from all of the pharmacies in the state?

22          A.     Yes.

23          Q.     And that's something that pharmacists have  
24       access to?

25          A.     Yes.

1 Q. And that's something that's -- that  
2 Albertsons corporate would have access to?

3 MR. WAHBY: Objection; form.

4 BY MR. LICHTER:

5 Q. Or just pharmacists?

6 A. I think just pharmacists.

7 Q. Okay.

8 A. I don't think just anybody can get access  
9 to it.

10 Q. Okay.

11 A. I think pharmacists, doctors, maybe nurse  
12 practitioners.

13 Q. Okay. And why are you asking Mr. Gandhi  
14 to send you this information here?

15 A. I'm just speculating off of memory that I  
16 would question the need for this particular product  
17 and would question why they were asking for it.

18 So I would want -- maybe this is my  
19 way of getting the pharmacist to do a little more  
20 due diligence and scrutinize their patients a little  
21 closer before we just special order in a product.

22 Q. And how would reviewing the PMP  
23 information help you address those concerns?

24 A. You would see how many times they filled  
25 this prescription, if there's any other medications.

1 PMP helps to just identify things that  
2 we may not have access to because this PMP will show  
3 all prescriptions from all pharmacies. So -- when  
4 Albertsons would only have access to what was filled  
5 internally at an Albertsons store.

6 But it looks, in this case, like at  
7 least something else was filled in a Walgreens that  
8 maybe we wouldn't have known without checking this.

9 Q. Does it look like the majority of these  
10 prescriptions were filled at Albertsons pharmacies?

11 A. It does.

12 Q. And would reviewing the PMP information --  
13 would that help you evaluate whether a prescription  
14 was issued for a legitimate medical purpose?

15 MR. WAHBY: Objection; form.

16 A. Not necessarily.

17 BY MR. LICHTER:

18 Q. Could it?

19 A. I think every prescription needs -- I  
20 think it's part of the puzzle -- or part of the  
21 picture.

22 Q. Right. It gives --

23 A. So yeah.

24 Q. It gives you more information to help you  
25 determine that; is that fair?

1 A. Sure.

2 Q. Okay. And above that e-mail, at the  
3 bottom of the first page and onto the second page,  
4 it looks like Mr. Gandhi responds to you on  
5 December 27, 2016; is that right?

6 A. Yes.

7 Q. And he says, "Hi David, below is the info  
8 you asked for. He also filled the same prescription  
9 on 11/04/16 but not 12/02/16 but it's not listed on  
10 PMP website."

11 Did I read that correctly?

12 A. Yes.

13 Q. And then on the following page, Mr. Gandhi  
14 provides you the actual PMP information from this  
15 patient; is that right?

16 A. Yes.

17 Q. And, again, I've highlighted portions and  
18 added some red text to the section, but other than  
19 those two points, that's what he said to you,  
20 correct?

21 MR. WAHBY: Objection; form.

22 Object to the exhibit.

23 A. Yes.

24 BY MR. LICHTER:

25 Q. Okay. And it looks like he sends you the

1 PMP information on this patient from July 14th,  
2 2016, to December 22, 2016, based on the far-left  
3 column.

4 Does that appear correct?

5 A. Yes.

6 Q. Okay. That's about six months of PMP  
7 information?

8 A. Yes.

9 Q. And I added short red lines to divide each  
10 of the months for the fill dates.

11 Do you see that?

12 A. Yes.

13 Q. Okay. In the pharmacy context, have you  
14 ever heard the phrase "Trinity" or Holy Trinity"?

15 A. Yes.

16 Q. Okay. What do you understand that to  
17 mean?

18 A. Which one?

19 Q. Trinity.

20 A. When a patient receives a combination of  
21 an opioid, a benzodiazepine, and a muscle relaxant.

22 Q. And what is a Holy Trinity?

23 A. That will specifically indicate the  
24 benzodiazepine of alprazolam and muscle relaxant of  
25 carisoprodol.

1 Q. And what is the significance of a Trinity  
2 or a Holy Trinity prescription?

3 MR. WAHBY: Objection; form.

4 A. I don't necessarily -- I don't understand.  
5 What do you mean, "What is the significance"?

6 BY MR. LICHTER:

7 Q. Is the Trinity or Holy Trinity  
8 prescription something you learned about in pharmacy  
9 school?

10 A. No.

11 Q. When did you learn about it?

12 A. I don't remember. 2012. 2011. When was  
13 Katrina? Sorry.

14 Q. I don't recall.

15 A. After Hurricane Katrina is when I became  
16 more familiar with that.

17 Q. Okay. Did people start to present  
18 prescriptions for the Trinity and Holy Trinity more  
19 often after Katrina?

20 MR. WAHBY: Objection; form.

21 BY MR. LICHTER:

22 Q. I'm asking --

23 A. I don't know that they were necessarily  
24 more often. I think that -- I just think through  
25 the passage of time and as people obtained more

1 information about everything surrounding opioids or  
2 prescriptions or abuse and dependence and all of  
3 that stuff, more information was gathered year after  
4 year after year.

5 And so while -- you asked me if I  
6 learned about it in pharmacy school. No. But I  
7 don't know if it was tracked like it is now, 27  
8 years ago.

9 And even when you look at things --  
10 like, when I was in pharmacy school, hydrocodone  
11 wasn't a Schedule 2. It is now. Carisoprodol  
12 wasn't scheduled at all. It is now.

13 So as knowledge evolved, drugs  
14 evolved, and thus red flags became something that  
15 became more important, and Holy Trinity became part  
16 of the dialogue around all this stuff. But  
17 specifically when that popped up, I really don't  
18 remember.

19 Q. Okay. You mentioned that these types of  
20 prescriptions are tracked now?

21 MR. WAHBY: Objection; form.

22 BY MR. LICHTER:

23 Q. More -- more so now than previously?

24 A. We have PMP that tracks controlled  
25 substances, right?

1 Q. You tell me.

2 A. I mean, yeah. That's ...

3 Q. Do you know why specifically the Trinity  
4 would be tracked more now than previously?

5 MR. WAHBY: Objection; form.

6 A. I don't know whether the Trinity is  
7 tracked more now. I think all controlled substances  
8 are tracked more now.

9 BY MR. LICHTER:

10 Q. Okay. Is the Trinity a drug cocktail  
11 that's likely to be abused?

12 MR. WAHBY: Objection; form.

13 A. I think all controlled substances have the  
14 potential to be abused.

15 BY MR. LICHTER:

16 Q. Is the Trinity cocktail considered a --  
17 considered a red flag?

18 A. Yes.

19 Q. Do you know why?

20 A. Not specifically.

21 Q. You have no idea why that's considered a  
22 red flag? Any general understanding you have?

23 MR. WAHBY: Objection; form.

24 A. Well, if you're getting multiple  
25 controlled substances, benzodiazepines can



1     potentiate the effect of opioids. So when taken in  
2     combination, you can get a -- maybe a stronger  
3     effect. So that is a risk that you would want to  
4     evaluate with the patient.

5     BY MR. LICHTER:

6             Q. Any other reason why you can think of that  
7     this would be considered a red flag?

8             A. Why a Trinity would be a red flag?

9             Q. Yes.

10            MR. WAHBY: Objection; form.

11            A. No.

12     BY MR. LICHTER:

13            Q. We know what an opioid is.

14                     What is a benzodiazepine? What type  
15     of medication is that?

16            A. It's -- I guess it would be an antianxiety  
17     or a sedative-type medication.

18            Q. Okay. Is it a depressant that slows down  
19     the brain and nervous system?

20            MR. WAHBY: Objection.

21            A. Yes.

22     BY MR. LICHTER:

23            Q. And then a muscle relaxant, which I think  
24     you said is the third component of the Trinity.

25                     That essentially relaxes muscles; is

1       that fair?

2           A.    Yes.

3           Q.    Based on your knowledge, is the Trinity  
4       combination widely regarded as a red flag in the  
5       pharmacy community?

6                   MR. WAHBY:  Objection; form.

7           A.    Yes.

8       BY MR. LICHTER:

9           Q.    Okay.  We can look at some of the  
10       highlighting I added here.

11                   Every time this patient filled an  
12       opioid prescription within six months of the PMP  
13       report, I highlighted it in yellow.

14                   Do you see that?

15          A.    Yes.

16          Q.    I also wrote "Opioid" in red next to the  
17       first one.

18                   Do you see that?

19          A.    Yes.

20          Q.    So those are the hydrocodones and the  
21       promethazine and codeine prescriptions.

22                   Does it appear that I highlighted  
23       those accurately?

24                   MR. WAHBY:  Objection; form.

25          A.    Yes.

1 BY MR. LICHTER:

2 Q. And every time this patient filled a  
3 muscle relaxant, I highlighted it in blue. I also  
4 wrote the word "Muscle Relaxant" in red next to the  
5 first one.

6 Do you see that?

7 A. Yes.

8 Q. And those are carisoprodol and zolpidem  
9 tartrate prescriptions.

10 Did I do that correctly?

11 A. Zolpidem is not a muscle relaxant.

12 Q. Oh, it's not? Zolpidem tartrate is not a  
13 muscle relaxant?

14 A. No.

15 Q. What is it?

16 A. It's a sedative.

17 Q. And sedatives are depressants?

18 A. It's a sleeping -- sleeping pill.

19 MR. WAHBY: I restate the objection to  
20 the exhibit.

21 MR. LICHTER: That's the third  
22 objection to the exhibit. You can have a standing  
23 objection to the use of it.

24 All right.

25 BY MR. LICHTER:

1           Q.    And -- and every time this patient filled  
2   the benzodiazepine prescription, I highlighted those  
3   in orange.  And I wrote the word "Benzodiazepine" in  
4   red next to the first one.

5                   Do you see that?

6           A.    Yes.

7           Q.    Okay.  And that would be the clonazepam  
8   prescriptions.

9                   Did I highlight those correctly?

10          A.    Yes.

11          Q.    Okay.  If you can flip back to the first  
12   page.

13          A.    (Complied.)

14          Q.    And the next e-mail from the bottom is,  
15   again, from Mr. Gandhi to you on December 27, 2016.

16                   Do you see that?

17          A.    Yes.

18          Q.    Okay.  And he writes, "Hi David, I just  
19   added 1 more medication for a Medicaid covered NDC I  
20   am very busy to send you the details but patient  
21   needs it ASAP.  Can you please approve the NDC."

22                   And above that, you write in response,  
23   "They've been submitted."

24                   Do you see that?

25          A.    Yes.

1 Q. Can you explain what was submitted?

2 A. The details of it? No. This appears to  
3 be another override that we had to do for a  
4 nonpreferred product, but it doesn't indicate which  
5 drug it was.

6 I am assuming he just added onto  
7 another e-mail chain -- to this existing e-mail  
8 chain. I don't think that this Medicaid related to  
9 this patient because this patient did not appear to  
10 be on Medicaid.

11 Q. So the second e-mail from the bottom on  
12 the first page, this is discussing a different  
13 patient than the rest of the e-mails in this chain?

14 A. I believe so.

15 Q. Okay. So back to the initial patient that  
16 we were discussing for whom the PMP information was  
17 sent.

18 Do you know if that patient ultimately  
19 got approval to receive the highly-abused and  
20 sought-after medication that he was seeking at the  
21 beginning of the e-mail chain?

22 MR. WAHBY: Objection; form.

23 A. I don't know.

24 BY MR. LICHTER:

25 Q. Okay.

1 A. I don't recall.

2 Q. And given the types of prescriptions we  
3 see in the PMP report, do you know if Albertsons  
4 ever blocked this patient from receiving future  
5 prescriptions?

6 A. I don't believe they did, but I don't know  
7 that there would be a need to block this patient.

8 Q. Do you know if this patient was ever  
9 flagged in any way by this Albertsons for its  
10 pharmacists?

11 A. I don't know.

12 Q. Do you know if Albertsons ever put this  
13 patient on a list for future tracking or monitoring  
14 or anything like that?

15 MR. WAHBY: Objection; form.

16 A. I don't know.

17 BY MR. LICHTER:

18 Q. So you can set this one aside, and we'll  
19 go to the next document that we'll mark as  
20 Exhibit 5.

21 (Exhibit 5 marked.)

22 MR. LICHTER: For the record,  
23 Exhibit 5 is Bates numbered ALB-MDLCT9-00383753.

24 BY MR. LICHTER:

25 Q. Have you seen this document before?

1           A.    I mean, it looks like I responded to it,  
2    so I wrote it, but I -- or I forwarded it, but I  
3    don't remember.

4           Q.    Have you seen in e-mail string within the  
5    last few months?

6                   MR. WAHBY:  Objection; form.

7           A.    No.

8    BY MR. LICHTER:

9           Q.    Is this a January 12th, 2019, e-mail  
10   string between you and other Albertsons employees?

11          A.    Yes.

12          Q.    If we can look at the long e-mail in the  
13   second half of the document.  This appears to be  
14   sent from the Pharmacy Store Number 4105 general  
15   e-mail address to you and Kim Parta; is that right?

16          A.    Yes.

17          Q.    And the name of the person who sent it is  
18   Kavitha; is that right?

19          A.    Yes.

20          Q.    Do you know Kavitha's last name?

21          A.    She is Indian.  It's -- I don't know how  
22   to pronounce it.  It's long and starts with a "G."

23          Q.    Okay.  And do you know her title with  
24   Albertsons at this time?

25          A.    Staff pharmacist.

1           Q.    I think you mentioned her before, but who  
2    is Kim Parta?

3           A.    She's another one of the DPMs in DFW.

4           Q.    That's district pharmacy manager?

5           A.    Yes.

6           Q.    Are you aware that Store 1045 is located  
7    in Texas?

8           A.    Yes.   That's in Dallas.

9           Q.    And Kavitha writes, "Hi, I just needed  
10   some clarification on filling scripts on opiate  
11   medications for acute pain.

12                   "From what I understand, one the [sic]  
13   steps taken to deal with opiate crisis is to limit  
14   only 7 days supply on patients that are treated for  
15   acute pain.   Some pharmacies like Walmart and Cvs  
16   has a rule in place for that and some insurance  
17   companies like caremark, medicare and Medicaid have  
18   rejected scripts for more than 7 days supply unless  
19   we got a prior authorization from the dr for a  
20   larger quantity.   Cdc is also recommending the same  
21   and the cms and learning cart training we did talk  
22   about the same limitation?

23                   "So is this rule a company policy or  
24   insurance policy or rule or law and what is our  
25   policy regarding this opioid -- opiate crisis???"



1 Three question marks.

2 Did I read that correctly?

3 A. Yes.

4 Q. So to summarize, it looks like Kavitha is  
5 asking you, in the context of the opioid crisis,  
6 what is Albertsons' policy regarding filling opioid  
7 prescriptions for a supply that exceeds seven days;  
8 is that fair?

9 A. Yes.

10 Q. Okay. And she says other major chains and  
11 insurance companies and government programs reject  
12 these scripts if they don't at least get prior  
13 doctor authorizations, right?

14 A. Yes.

15 Q. And Kavitha then writes, "If it is not an  
16 Albertsons' policy, are we filling all scripts with  
17 the quantity prescribed by the md irrespective if it  
18 is for acute pain" -- sorry -- "for acute or chronic  
19 pain with out limiting it to a seven days supply?

20 "Also, if the insurance is rejecting  
21 and saying that we cannot fill it for more days  
22 supply and the patient want to pay cash, can we  
23 override the insurance rejection and fill the script  
24 on cash which is the case with most patients??"

25 Did I read that okay?

1           A.     Yes.

2           Q.     And here she's asking, "If the insurance  
3     rejects the script for exceeding seven days, can we  
4     dispense it anyway if the patient wants to pay cash  
5     for it?"

6                     Is that fair?

7           A.     Yes.

8           Q.     And in your experience, is paying cash for  
9     opioid prescriptions considered a red flag?

10          A.     It seems to be one of the universal red  
11     flags.

12          Q.     Do you know why that's considered a red  
13     flag?

14          A.     Because you're circumventing an insurance  
15     company from seeing the claim.

16                     When we bill a prescription, it  
17     would -- I'm assuming here. This is my  
18     interpretation.

19                     When you bill a prescription, you  
20     would get an insurance to pay for it. So if you  
21     bill it again, they may not pay for it, and it  
22     may -- before PMP, it used to help pharmacies  
23     identify when you had doc- -- patients jumping  
24     around to different pharmacies or getting early  
25     refills.

1           Q.     And why can that be considered  
2     problematic?

3                     MR. WAHBY:  Objection; form.

4           A.     Because they would be getting multiple  
5     prescriptions from multiple places.  It seems to be  
6     less of a problem now that we have PMP, but I think  
7     it's still universally considered a red flag even  
8     though the information's available in different  
9     places now.

10    BY MR. LICHTER:

11           Q.     Looking at the top of the page, you  
12     respond to Kavitha on January 12th, 2019, correct?

13           A.     No.

14           Q.     Oh, sorry.  You sent the e-mail to Julie  
15     Spier, and you cc'd Kim Parta and Don Bowman; is  
16     that correct?

17           A.     Yes.

18           Q.     Okay.  And you say, "I get this question a  
19     lot lately.  I keep saying it's up to their  
20     professional discretion, but we may need a better  
21     position as a company?"

22                     Do you see that?

23           A.     Yes.

24           Q.     Okay.  And Kavitha's e-mail poses several  
25     different questions.

1                   So which one of them are you getting a  
2     lot lately?

3           A.    As I recall, this was about the time that  
4     the -- recommendation rolled out on -- to limit  
5     acute meds to a seven-day supply. And so people  
6     were asking, "Do we have a policy? Are we limiting  
7     people to seven days' supply?"

8           Q.    And when you say "people were asking," is  
9     that Albertsons' pharmacists that you oversee?

10          A.    Yes.

11          Q.    And were you getting this type of question  
12     from the different pharmacies that you oversaw?

13          A.    From what I recall, yes.

14          Q.    Can you explain what you mean here by  
15     Albertsons needs a "better position as a company,"  
16     beyond leaving it up to a pharmacist's professional  
17     discretion?

18                   MR. WAHBY: Objection; form.

19          A.    I said, "we may need a better position."

20     BY MR. LICHTER:

21          Q.    Explain what you mean by that.

22          A.    The -- if I -- if I recall, as I received  
23     multiple questions about the same issue, I thought  
24     we -- maybe the company -- needed -- or maybe the  
25     company needed to provide -- make a determination if

1 we were going to also limit seven-day supplies.

2 It was -- it was fairly complicated  
3 because we -- this has -- my memory isn't the best,  
4 but from what I recall, this was in January. And  
5 January, everybody's insurance rolls over.  
6 Everybody gets new insurance at the beginning of a  
7 calendar year.

8 So we had people who had been on  
9 opioids, but yet, if they're new with their  
10 insurance, the insurance would view it as the first  
11 time they've ever received that. So those  
12 insurances were limiting us to a seven-day supply.

13 And it becomes a very challenging  
14 situation when they're not necessarily a new patient  
15 or a new prescription. But the insurance is viewing  
16 it as new because you have -- because the insurance  
17 is new. The prescription wasn't new. The patient  
18 wasn't new. The insurance is what was new.

19 And so the insurances were limiting us  
20 to what we could dispense for that patient, and that  
21 created a complicated situation because if we only  
22 filled seven days, the patient would lose the  
23 balance of their medication, and it would require  
24 additional doctor visits and additional care to get  
25 another prescription, or we would have to fill it as

1 cash to bypass the insurance company so that the  
2 patient could get their full order.

3 Q. And up until this time, is it fair to say  
4 that Albertsons' policy in this area was to leave it  
5 up to the professional discretion of the pharmacist?

6 A. It's been fairly consistent for as long as  
7 I can remember that it's -- we leave that decision  
8 to the pharmacist.

9 Q. And that's the policy today?

10 MR. WAHBY: Objection; form.

11 A. Yes.

12 BY MR. LICHTER:

13 Q. So your suggestion here that Albertsons  
14 may need a better position as a company, there was  
15 no better position that was ever taken by  
16 Albertsons?

17 MR. WAHBY: Objection; form.

18 A. I think my wording is incorrect here. I  
19 think it's more we just need guidance as a company.  
20 Where if we encounter one of these situations where  
21 an insurance is saying, "We're limiting a new script  
22 to seven day supply," but it wasn't a new script,  
23 how do we override that? How do we bypass that?  
24 Are we okay to go ahead and fill it as cash?

25 You know, yes, we are creating an

1 additional red flag to fill it as cash, but we're  
2 doing it on behalf of the patient because they would  
3 want us to use their insurance normally, but their  
4 insurance is creating a barrier to us filling their  
5 prescription. So how do we circumvent those  
6 barriers and still provide care to that customer?

7 BY MR. LICHTER:

8 Q. Did Albertsons ever provide that  
9 additional guidance to its pharmacists to help them  
10 out in that area?

11 A. Not that I recall. It just stayed  
12 consistent. Evaluate each patient individually.  
13 Identify what you need to for that individual  
14 customer. I think Albertsons has done a fairly good  
15 job at not laying blanket, "You must do this. You  
16 can only do this. You can never do this."

17 It's always been a, "You need to look  
18 at that prescription, that patient. Evaluate that  
19 situation individually. And then make a  
20 determination on how to proceed."

21 MR. LICHTER: We can go ahead and take  
22 a lunch break if you guys are okay with that.

23 MR. WAHBY: Yeah.

24 Do you want a lunch break, or do you  
25 want to keep chugging along?

1 THE WITNESS: Oh, I don't care. What  
2 time -- I don't know what time it is.

3 MR. LICHTER: It's a little after 12.

4 THE VIDEOGRAPHER: Let's go off the  
5 record.

6 The time is 12:06 p.m. We are off the  
7 record.

8  
9 (A lunch recess taken from 12:06 p.m.  
10 to 1:00 p.m.)  
11  
12  
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1 AFTERNOON SESSION

2 THE VIDEOGRAPHER: The time is 1 p.m.,  
3 and we are on the record.

4 MR. LICHTER: Welcome back, everyone.  
5 Can I have the next document marked as Exhibit 6.

6 (Exhibit 6 marked.)

7 MR. LICHTER: For the record, this  
8 document is Bates numbered ALB-MDLCT9-00073285.

9 EXAMINATION (CONTINUED)

10 BY MR. LICHTER:

11 Q. Mr. Hicks, have you seen this document  
12 before?

13 A. Again, another case where I wrote -- I saw  
14 it when I wrote it -- or read it a couple years ago.

15 Q. But you haven't seen it in the past few  
16 months?

17 A. No.

18 Q. Does this appear to be a March 1, 2019,  
19 e-mail string between you and other Albertsons  
20 employees?

21 A. Yes.

22 Q. And page 73287 is an attachment to that  
23 e-mail string; is that right?

24 A. Yeah.

25 Q. And the attachment is a March 2, 2019,

1 letter from you to [REDACTED] with the Subject  
2 line of "Warning For Poor Work Performance, Poor  
3 Customer Service and Compliance"; is that right?

4 A. Yes.

5 Q. And according to this letter, [REDACTED]  
6 [REDACTED] was a pharmacy manager at Albertsons Store  
7 4290 in -- sorry -- Azle Texas? Az-ley?

8 A. Azle.

9 Q. -- Azle, Texas; is that right?

10 A. Yep.

11 Q. And that's in Tarrant County; is that  
12 right?

13 A. Yes, I believe so.

14 Q. Let's start with the second page of the  
15 document, Bates numbered 73286, and this is a  
16 January 13, 2019, e-mail from you to Jordan Jones;  
17 is that right?

18 A. Yes.

19 Q. Okay. And who is Jordan Jones?

20 A. He was an HR manager.

21 Q. For Albertsons?

22 A. Yes.

23 Q. And you write, (as read) "Jordan, as a  
24 follow up to our conversation last week I am sending  
25 you some notes around overall operations and job

1 execution at 4290.

2 "Rx Manager [REDACTED] is routinely  
3 behind in day to day work duties. Basically she and  
4 her team are not efficiently moving prescriptions  
5 through workflow. This is creating longer than  
6 needed wait times and impacting customer service.  
7 Store routinely runs with 1 hour+ wait times to fill  
8 prescriptions. (We've even had complaints from some  
9 of our own employees about this.) [REDACTED] frequently  
10 works 2-3 hours past her shift, sometimes past  
11 midnight, to catch up on each days work.

12 Prescriptions are left behind from one day to the  
13 next and over time there are 100+ prescriptions back  
14 logged and not completed."

15 Did I read that okay?

16 A. Yes.

17 Q. Do you recall having these issues with  
18 [REDACTED], the pharmacy manager at Store 4290?

19 A. Yes.

20 Q. Okay. And a few paragraphs down, you  
21 write, "in August 2018, Don Bowman had a visit with  
22 [REDACTED] where they discussed workflow/efficiency/  
23 organization. Store was continuously behind on days  
24 that [REDACTED] works. Her time with DV was well behind  
25 normal RPh standards- 5+ minutes per script.

1 Did I read that okay?

2 A. Yes.

3 Q. Can you explain what you mean by "Her time  
4 with DV was well behind RPh standards"?

5 A. "DV" stands for data verification, so that  
6 is the process by which a pharmacist validates the  
7 information on the prescription as it's been  
8 inputted into the computer system. And -- and I  
9 mean, honestly, [REDACTED] was just a very inefficient  
10 pharmacist and worker and very poor performer and  
11 routinely struggled in just about every aspect of  
12 her job.

13 Q. Okay. Let's go to that first page of the  
14 document, 73285, and look at the second e-mail on  
15 the page, which is the long e-mail.

16 A. (Complied.)

17 Q. This is a February 28th, 2019, e-mail from  
18 you to Jordan Jones with a Subject line "4290 Rx  
19 Issues"; is that right?

20 A. Yeah.

21 Q. Okay. And you write, "Jordan, as a follow  
22 up to this visit, I went by to [sic] there has been  
23 little improvement at store 4290. I visited with  
24 Brian and we both feel we are in need of change at  
25 our manager position in Azle."

1                   In the middle of the page, some of the  
2       problems you list are "Rx sales ended [REDACTED].  
3       Rx script count [REDACTED]."

4                   Do you see that?

5           A.     Um-hum.

6           Q.     Can you explain what these numbers mean?

7           A.     Their pharmacy sales were trending  
8       negative, and their pharmacy prescription count were  
9       trending negative, indicating they've been running  
10      off customers and -- or losing customers and losing  
11      business as --

12          Q.     And --

13          A.     Go ahead.

14          Q.     I'm sorry.

15                   Were those negative numbers as  
16      compared to prior -- the prior store numbers or some  
17      sort of goal that Albertsons had for that store?

18          A.     That wasn't in comparison to goals. That  
19      was a year-over-year number.

20          Q.     And a third bullet says, "No outreach or  
21      networking within the community to help turn around  
22      and drive sales."

23                   Can you explain the types of outreach  
24      and networking Albertsons expected its pharmacists  
25      to do in order to drive sales?

1           A.    I think with [REDACTED], we had given her an  
2           opportunity to try to attract business into the  
3           store since -- since the sales trend was running  
4           negative. So we might visit a doctor's office in  
5           the area and introduce ourselves. Possibly visit a  
6           nursing home or senior center. Is there anything  
7           within the community where a pharmacy presence  
8           might, you know -- you know, just win over a new  
9           customer.

10          Q.    And those are options the actual  
11          pharmacist is expected to do?

12          A.    From time to time, yes.

13          Q.    Okay. The last bullet point says, "Labor  
14          is missed on average 20 technician hours per week."

15                   Can you explain what that means?

16          A.    Similar to what we talked about earlier,  
17          they are given a -- based off their volume and their  
18          business, the company has a labor model or a labor  
19          standard which they're supposed to schedule towards.  
20          And we found that [REDACTED] was a -- again, was a very  
21          inefficient pharmacist and struggled to stay caught  
22          up with work, so we would have to staff the pharmacy  
23          with extra people to try to maintain staying caught  
24          up with the business.

25          Q.    So for this store, then, there was an

1 average of 20 technician hours per week under --  
2 under [REDACTED]?

3 A. Well, [REDACTED] was the pharmacy manager, and I  
4 don't have a recollection of, like, what their --  
5 where they fell on the labor model, what their  
6 current volume was.

7 But at the time, I would have averaged  
8 it out and -- just as a -- again, as a bullet point,  
9 to show consistency on lack of meeting company  
10 expectations and efficiency standards.

11 Q. Okay. And toward the bottom of this page,  
12 you write, "Over the past 2 months I have had  
13 several meetings, offering guidance and setting  
14 expectations with [REDACTED]. I scheduled one of our high  
15 talent Rx managers to work extra in this store for a  
16 full week to help with training and offer additional  
17 help with workflow and productivity. This seemed to  
18 have helped for a few weeks but has had minimal  
19 lasting effect."

20 So in these e-mails, you describe [REDACTED]  
21 working extra hours after her shifts -- her shifts,  
22 sometimes past midnight, and still being extremely  
23 backlogged with the volume of prescriptions the  
24 store of the dispensing; is that right?

25 A. Um-hum.

1 Q. Do you know about how many pharmacists and  
2 technicians were working at this location at the  
3 time?

4 A. There would have been two full-time  
5 pharmacists.

6 Q. That's in addition to [REDACTED]?

7 A. No. [REDACTED] plus one other --

8 Q. Okay.

9 A. -- staff pharmacist.

10 And I'm -- I'm guessing, but I believe  
11 they had three full-time technicians at the time.

12 Q. Is there a reason you didn't hire  
13 additional staff for -- for more than a week in this  
14 case?

15 A. I mean, the need was to -- was for Jill to  
16 become a more efficient pharmacist, not to layer in  
17 more staffing to cover up her deficiencies.

18 Q. Do you know if [REDACTED] or anyone else at the  
19 pharmacy ever requested additional staff to help out  
20 with the workload?

21 A. I don't recall.

22 Q. You then write, "One of her biggest  
23 deficiencies continues to be the time it takes for  
24 her to complete filling prescriptions. [REDACTED] is very  
25 deliberate with her checking and process and it



1 takes longer than average for her to move  
2 prescriptions through the workflow process. This  
3 slows down the staff and productivity of the  
4 pharmacy. Eventually, all the other routine tasks  
5 get left undone."

6 How did you become aware that this was  
7 an issue?

8 A. Observation. We can run productivity  
9 reports. I think more -- I don't remember  
10 specifically how did this first come to my  
11 attention. I think it was just more through  
12 feedback about customer service issues, long wait  
13 times, technicians grumbling that they were  
14 stressed. They were challenged to do their job  
15 because their pharmacist -- or pharmacy manager was  
16 very inefficient at her job.

17 Q. Is there a certain goal of a number of  
18 minutes the pharmacists are expected to fill  
19 prescriptions within?

20 A. No.

21 Q. No? There's nothing like a 15-minute  
22 guarantee or anything like that at any Albertsons  
23 pharmacy?

24 A. No. We kind of just have an expectation  
25 of giving good service and taking care of our

1 customers.

2 Q. Are pharmacists given any specific goals  
3 as far as how fast they should be filling  
4 prescriptions?

5 A. No. I mean, there's no -- there's nothing  
6 that says that a prescription must be filled in X  
7 amount of time.

8 There's just a very generic kind of  
9 idea about take care of your customers. Give good  
10 service, and make sure they go home happy.

11 Q. When you say, "[REDACTED] is very deliberate  
12 with her checking and process," would you agree that  
13 pharmacists are supposed to be very deliberate with  
14 prescription checking and processing?

15 A. Of course, but [REDACTED] took it to an extreme.

16 Q. And the next paragraph says, "After  
17 another follow up visit yesterday, I visited for  
18 awhile with Brian and we feel that [REDACTED] is simply  
19 not cut out to do the job."

20 Who is Brian?

21 A. Brian was the store director at the Azle  
22 store.

23 Q. Can you explain what actually ultimately  
24 happened to [REDACTED]?

25 MR. WAHBY: Objection; form.

1           A.     So this is a confusing situation.  You'll  
2     notice earlier there was reference to Don Bowman had  
3     visited with her.

4                     Don had been the DPM at this location.  
5     Due to shuffling lines in districts, I became the  
6     DPM for a short period of time, and then it went  
7     back to Don.

8                     So eventually, what happened is she  
9     was -- she stepped down as manager, went to another  
10    store and another location as a staff pharmacist.  
11    Took her into a lower volume store.  She continued  
12    to struggle there, and I do not recall if her  
13    separation was voluntary or not.

14    BY MR. LICHTER:

15           Q.     When you say "she stepped down," does that  
16    mean that she was demoted?

17           A.     I don't recall if she -- from what I  
18    recall, she applied for another store location.  I  
19    think she basically demoted herself, seeing the  
20    writing was on the wall that she was not cutting it  
21    as a pharmacy manager.  So she had an opportunity to  
22    go into a lower-volume store with less  
23    responsibilities.

24           Q.     Do you know about when she ultimately left  
25    Albertsons?

1 A. I don't.

2 Q. Do you know if staffing was ever increased  
3 at this location on a permanent basis?

4 A. At the Azle location?

5 Q. Yeah.

6 A. It -- yeah. I know we have -- well, this  
7 is not my location, but my understanding is  
8 there's -- the business returned, volume returned.  
9 The store's a lot busier than it used to be, so it  
10 is definitely staffed with more people now than it  
11 was back then.

12 Q. So more pharmacists and more techs?

13 A. Yes.

14 Q. Do you know what would account for that  
15 increase in business at this location?

16 A. Better service. Competent help being in  
17 the store. Not upsetting customers and running them  
18 off.

19 THE WITNESS: Is that fair to say?

20 A. Sorry. I mean, it's blunt. She was  
21 just -- I hope she doesn't ever see this. Sorry.

22 BY MR. LICHTER:

23 Q. And the warning letter that's the  
24 attachment to this e-mail to page 73287, you sent  
25 that to [REDACTED] on March 2, 2019; is that right?

1 A. Yes.

2 Q. And in the middle of the page before the  
3 bullets, you write, (as read) "Your unacceptable Q4  
4 metrics are as follows: Rx sales ended  
5 [REDACTED]."

6 Is there a specific threshold  
7 Albertsons has for this metric, where a drop in  
8 prescription sales becomes unacceptable?

9 A. No. It -- with [REDACTED], it was a combination  
10 of everything, and it really boiled down to service.

11 It's hard to put a metric on service.  
12 But through bad service and bad management, it leads  
13 to not -- it leads to loss of business.

14 Q. And the second bullet point there, "Rx  
15 script count [REDACTED]."

16 Same question there. Is there a  
17 specific threshold that Albertsons has for this  
18 metric where a drop in the prescription count  
19 becomes unacceptable?

20 A. No.

21 Q. Are pharmacists given any sort of goals,  
22 as far as prescription sales or prescription counts  
23 when they're working at Albertsons?

24 A. No -- I mean, we -- the goal is to always  
25 increase sales, increase business, you know, to kind

1 of be moving forward.

2 But no store has a "Hey, you must fill  
3 300 prescriptions today, or there's consequences."

4 Q. Just the goal, then, to always increase  
5 prescription sales?

6 MR. WAHBY: Objection; form.

7 A. I think the goal of any business is to  
8 always have business and -- I don't know that our  
9 goal is always to grow, but it's certainly to not  
10 lose what you have or to -- I mean, you got to --  
11 you're in business to do business, right?

12 BY MR. LICHTER:

13 Q. Sure. So you don't know if it's one of  
14 Albertsons' goals to grow its prescription sales?

15 MR. WAHBY: Objection; form.

16 A. I -- the goal is -- we do have a goal to  
17 grow. But I don't know that we have a goal that  
18 we -- this person has to grow this much.

19 BY MR. LICHTER:

20 Q. Sure. Does Albertsons' goal to grow --  
21 does that include prescription sales?

22 MR. WAHBY: Objection; form.

23 BY MR. LICHTER:

24 Q. Or is that somehow excluded from its goal?

25 A. I -- I -- I mean, it's all -- it's all

1       together. I mean, I'd say yes.

2           Q.    Yes, it includes prescription sales?

3           A.    Yes.

4                   MR. LICHTER: Can I have the next  
5   document marked as Exhibit 7?

6                   (Exhibit 7 marked.)

7                   MR. LICHTER: Okay. For the record,  
8   this document is Bates numbered ALB-NM00011005.

9   BY MR. LICHTER:

10          Q.    Have you seen this document before?

11          A.    No.

12          Q.    Represent to you this is an internal  
13   Albertsons report dated January 24, 2020, that  
14   discusses the controlled substance dispensing of  
15   Albertsons Pharmacy Number 3914, located in Silver  
16   City, New Mexico.

17                   And up toward the top, it says, "DPM,"  
18   who is noted as Dave Carrick.

19                   Do you know Mr. Carrick?

20          A.    No.

21          Q.    I'd like to go over some parts of this  
22   document together.

23                   The bottom of page 1 identifies some  
24   prescription fill data for this store, as far as  
25   weekly prescriptions filled, what percent are

1 Schedule 2s compared to the company average.

2 Do you see that?

3 A. Yeah.

4 Q. And below that, it identifies the number  
5 of stores in the state of New Mexico at 29 and  
6 identifies IQVIA controlled substance dispensing  
7 ratings.

8 Do you see that?

9 A. Yes.

10 Q. Do you know what IQVIA controlled  
11 substance dispensing ratings are?

12 A. Vaguely.

13 Q. What do you understand them to be?

14 A. I know that our corporate office -- or I  
15 don't know if it's our compliance team.

16 Somebody in our corporate office has  
17 a -- I guess, access to all of this data, and they  
18 rate -- I mean, similar to what this is, they rate  
19 stores based off their dispensings.

20 I don't know specifically what IQVIA  
21 is or stands for. I've never accessed the program  
22 or seen it in action.

23 Q. Have you ever been provided IQVIA  
24 controlled substance dispensing data?

25 A. Yes.



1 Q. From Albertsons?

2 A. Yes.

3 Q. In what context?

4 A. I had a store that they sent -- it was  
5 several -- it was a couple years ago, but it  
6 appears -- from looking at this, it looks like it  
7 would have been a very similar document they sent to  
8 me on one of my stores.

9 Q. Do you remember which store that was?

10 A. I think I had it on Store 226 in Sherman,  
11 which is up by the Red River.

12 Q. Is Sherman the county?

13 A. Grayson County.

14 Q. Grayson County?

15 A. No -- yes, Grayson County.

16 Q. Okay. And then on the top of page 2, you  
17 see that IQVIA dispensing ratings chart there?

18 A. Yeah.

19 Q. Do you recall a similar chart like this in  
20 the document you saw for Store 226?

21 A. I think so.

22 Q. Okay. And below the chart, it indicates,  
23 "A review of all prescriptions dispensed from  
24 10/19/19 - 1/20/2020 was performed and details  
25 provided below."

1 Do you see that?

2 A. Um-hum. Sorry. Yes.

3 Q. Thanks. It then gives a section on  
4 overall insights for that store based on its review  
5 of the prescriptions dispensed.

6 Do you see that?

7 A. Yes.

8 Q. Okay. Below that section at the bottom is  
9 a section titled, "Patients," which appears to  
10 identify specific information for what looks like a  
11 few dozen Albertsons patients.

12 Do you see that on the following  
13 pages?

14 A. Yes.

15 Q. And page 4 of this document, the next  
16 section is entitled, "Prescribers," which discusses  
17 "Top prescribers by volume for CS prescriptions."

18 Do you see that?

19 A. Yes.

20 Q. And it looks like it gives IQVIA ratings  
21 for each of the prescribers, broken down by  
22 different controlled substance drugs.

23 Do you see that?

24 A. Yes.

25 Q. I think that starts on page 5.

1 A. (Complied.)

2 Q. And looking on page 6, on -- the next  
3 section is entitled, "Geography." It appears to  
4 discuss the Silver City population and surrounding  
5 areas as it relates to controlled substance  
6 dispensing at that store.

7 Do you see that?

8 A. Yes.

9 Q. And then the very last page is a "Store  
10 Action Plan" that appears to identify a plan of  
11 action for the store based on the above dispensing  
12 review.

13 Do you see that?

14 A. Yes.

15 Q. And you said you received a document  
16 similar to this for Store 226, which is located in  
17 Grayson County; is that right?

18 A. Yes.

19 Q. Have you received documents similar to  
20 this for any other stores you oversee?

21 A. I don't recall.

22 Q. Do you recall if you received documents  
23 similar to this for any stores you oversee in  
24 Tarrant County?

25 A. Not that I recall.

1 Q. Do you know about how many of these  
2 documents similar to this you've received from  
3 Albertsons at all?

4 A. I -- I'm pausing because I think I also  
5 received one for another store in Grayson County.

6 Q. Okay.

7 A. But I don't remember if it was necessarily  
8 this exact document or this exact IQVIA data.

9 But I do have another store in Grayson  
10 County, the Denison store.

11 Q. Okay.

12 A. And --

13 Q. Do you remember that store number?

14 A. 716.

15 Q. Other than those two stores, do you recall  
16 receiving a similar document like this?

17 A. I don't -- I don't remember. I don't -- I  
18 don't think so, but ...

19 Q. Okay. You don't have any memory of  
20 receiving a document like this for any of your  
21 stores in Tarrant County; is that right?

22 A. Correct.

23 Q. Do you know why you received a document  
24 similar to this for those two stores in Grayson?

25 A. I know the Sherman one. We were looking

1 at doing an acquisition of an independent pharmacy,  
2 and they were reviewing -- from what I recall, they  
3 were looking at the controlled substances of the  
4 store we were doing an acquisition on and comparing  
5 that to the controlled substance dispensing of our  
6 Sherman location -- of our company Sherman location.

7 And from what I recall, they kind of  
8 denied proceeding with the acquisition due to the  
9 independent pharmacy's controlled substance  
10 dispensings or ratings.

11 Q. Was that because the controlled substance  
12 dispensing at the potential new pharmacy was higher  
13 than the Sherman store?

14 A. I believe so.

15 Q. Any other reason you can recall as to why  
16 the acquisition didn't take place?

17 A. No. They -- they told me they sold too  
18 many controlled substances. It was -- didn't want  
19 to proceed with it.

20 Q. And why were they sending this information  
21 to you in that process?

22 A. Well, being -- at the time, I was DPM over  
23 that location. Anytime we have an acquisition lead,  
24 they try to get feedback from the division on the  
25 viability of -- what we would perceive the viability

1 of the new business would be. Is it -- you know, I  
2 guess get -- get on-the-ground knowledge of what do  
3 we know about that business.

4 Is it a customer base that would start  
5 shopping at our store? If we're about to invest in  
6 buying a business or buying a -- or taking over an  
7 independent pharmacy, what's the likelihood we would  
8 hold on to that business? What's the return on  
9 investment? Things like that.

10 So they asked for feedback from me or  
11 from somebody in the division that could say, "Hey,  
12 this is a -- this would not be good. This store is  
13 across the street, and we would attract a lot of  
14 this business." Or is this store across the street  
15 from a Kroger or a CVS, and more than likely, the  
16 Kroger would grab that business, so that would make  
17 it less valuable to us.

18 Q. Do you recall whether you gave Albertsons  
19 any feedback as a part of its analysis on whether to  
20 go forward with this acquisition?

21 A. So my feedback on this store would have  
22 been that it -- at least from the location, it would  
23 have been a viable independent. They were on the  
24 same side of the highway. It was fairly close. I  
25 think it was about half a mile or less than a mile

1 away. There was no other competition between it and  
2 us. So it seemed on the surface, at least on -- you  
3 know, driving past it on the ground, it seemed like  
4 it would have been a worthwhile acquisition.

5 And then my understanding, we have a  
6 team that does due diligence and looks through  
7 their -- the other -- you know, the independent's --  
8 the independent pharmacy's files and script  
9 information, patient information and kind of dives  
10 more into the data that I did not have access to.

11 Q. So you didn't give any advice to  
12 Albertsons against the acquisition for that  
13 potential new store; is that fair?

14 A. Oh, I think once we saw -- I remember once  
15 we saw this for that store, everybody was kind of --  
16 a little hands off on wanting to proceed it --  
17 proceed with it.

18 Q. So I'm confused. Did you get the  
19 dispensing data for the store Albertsons already  
20 owned or for the new potential store it was looking  
21 to acquire?

22 A. Well, I don't -- I don't know how much  
23 information I got.

24 I was part of a conversation that,  
25 "Hey, this is what we're looking at. This is some

1 issues we potentially have."

2 "Well, then, hey, it's not worth  
3 proceeding if those are the concerns."

4 Q. As part of that conversation, did you  
5 actually see a document similar to the exhibit that  
6 we're looking at now, or were -- just --

7 A. Yes.

8 Q. Yes. Okay.

9 And that was -- again, that was for  
10 the store Albertsons already owned or the store it  
11 was looking to acquire?

12 A. Honestly, I don't recall.

13 Q. It could have been for either one?

14 A. It could have been for either one.

15 Q. Okay. And then the second store you  
16 mentioned that you may have received a similar  
17 document, that was Store 716?

18 A. Yes.

19 Q. Okay. Do you remember the circumstances  
20 as to why you received -- may have received a  
21 similar document in that case?

22 A. I don't. I can't even remember when it  
23 was.

24 Q. You don't know if that was because -- was  
25 it a concern about the dispensing of that store or



1 any other reason?

2 A. Honestly, I don't recall. As I -- as I  
3 talked through the acquisition thing, I know that  
4 our Denison store did also -- or they actually did  
5 proceed with acquiring a Kroger that had closed  
6 down, so I can't remember if it was part of that or  
7 secondary to that because of dispensing issues or  
8 dispensing concerns. But that was, I think, maybe  
9 2018/2019, so I -- I just don't remember.

10 Q. Denison was probably 2018/2019?

11 A. Yes.

12 Q. Do you recall what year the Sherman store  
13 may have been?

14 MR. WAHBY: Objection; form.

15 A. I think that was within the last year or  
16 18 months. It was a little more recently, so I  
17 think that's why it's a little fresher.

18 BY MR. LICHTER:

19 Q. So other than those potential two  
20 instances for those stores where you may have seen a  
21 document similar to the one we're looking at, has  
22 Albertsons ever provided you information on  
23 dispensing trends for certain prescribers at the  
24 stores you oversee?

25 A. Not that I recall.

1 Q. Okay. How about information on dispensing  
2 trends for certain patients for the pharmacies you  
3 oversee?

4 A. No, not that I recall.

5 Q. Any information on dispensing trends for  
6 the store as a whole, not relating to demographics  
7 or anything like that?

8 A. I don't think so.

9 Q. Okay. No analytic information from the  
10 IQVIA data that we talked about before for any of  
11 the pharmacies you oversee?

12 MR. WAHBY: Objection; form.

13 A. Not that I recall.

14 BY MR. LICHTER:

15 Q. Do you know whether Albertsons provides  
16 any of that information to its pharmacists that you  
17 oversee?

18 A. No, I don't know.

19 Q. Set this one aside.

20 A. (Complied.)

21 MR. LICHTER: And we'll have the next  
22 document marked Exhibit 8.

23 (Exhibit 8 marked.)

24 MR. LICHTER: For the record, this  
25 document is Bates numbered ALB-MDLCT9-00094579.

1 BY MR. LICHTER:

2 Q. I'll represent to you this is an extract  
3 from a March 4th, 2021, Excel sheet Albertsons  
4 produced in this action with the Bates number I just  
5 read, with some highlighting that I added.

6 Do you see that?

7 A. (Examined exhibit.) Yes.

8 Q. This appears to be a list of, I think, 32  
9 Albertsons pharmacies for which you are noted as the  
10 division pharmacy manager or DPM as of March 2021.

11 Does that seem right?

12 A. Yes.

13 Q. And the highlighted stores here are the  
14 ones I believe are located in Tarrant County, Texas.

15 Does that highlighting seem accurate?

16 A. Yes.

17 Q. Did I leave out any stores that you  
18 oversee located in Tarrant County?

19 A. I don't believe so.

20 Q. And does this chart appear to accurately  
21 reflect your current assignments?

22 MR. WAHBY: Objection; form.

23 A. What do you mean?

24 BY MR. LICHTER:

25 Q. The stores that you're currently assigned

1 to oversee?

2 A. No. They've changed.

3 Q. Okay. Which ones have changed?

4 A. As far as the Tarrant County ones? Or all  
5 of them?

6 Q. All of them. Any of them.

7 MR. WAHBY: Objection; form.

8 A. 226. 716. 1784. 1788. 1925. 2578.  
9 2964. 3099. 3579. 3645. 3853. 4112. 4187.  
10 4234. 4239. 4265.

11 BY MR. LICHTER:

12 Q. And those numbers that you just read to  
13 me, are those --

14 A. No longer stores that I would supervise.

15 Q. Okay. And those are all -- those were all  
16 in Texas?

17 A. Yes.

18 Q. This accurate was -- sorry.

19 This chart was accurate as of  
20 March 2021; is that right?

21 A. Yes.

22 Q. Okay. And what's the reason for the  
23 change in the stores you oversee since then?

24 MR. WAHBY: Objection; form.

25 A. The division created a new district and

1       realigned stores with different DPMS, and kind of  
2       the pharmacy alignment adjusted with the store  
3       alignment.

4       BY MR. LICHTER:

5           Q.     But you currently oversee Store 1780?

6           A.     Yes.

7           Q.     And you currently oversee Store 2580?

8           A.     Yes.

9           Q.     You currently oversee Store 3625?

10          A.     Yes.

11          Q.     Do you currently oversee any other stores  
12       in Tarrant County?

13          A.     Yes.

14          Q.     Which ones?

15          A.     3854.

16          Q.     Any others?

17          A.     No.

18          Q.     Okay. You can set this one aside.

19          A.     (Complied.)

20                   MR. LICHTER: Have the next document  
21       marked Exhibit 9.

22                   (Exhibit 9 marked.)

23       BY MR. LICHTER:

24           Q.     I'll represent to you this chart we're  
25       looking at is a summary of the opioid dispensing

1 data that Albertsons produced for Store 3625 in  
2 dosage units, created by Dr. Craig McCann in this  
3 litigation.

4 And a dosage unit is essentially a  
5 pill, correct?

6 MR. WAHBY: Object. Objection; form.

7 Object to the use of this exhibit, and  
8 it's not Bates labeled.

9 BY MR. LICHTER:

10 Q. Is a dosage unit essentially a pill?

11 A. I believe so. I think -- I assume so.

12 Q. In your training as a pharmacist --

13 A. It may also being a milliliter if we're  
14 talking about a liquid.

15 Q. Okay. So a single pill or a milliliter;  
16 is that fair?

17 A. Yes.

18 Q. Okay. And the top indicates Store 3625 is  
19 located at 302 South Park Boulevard in Grapevine,  
20 Texas; is that correct?

21 A. Yes.

22 Q. And that's located in Tarrant County; is  
23 that right?

24 A. Yes.

25 Q. And you oversee Store 3625, correct?

1 A. Yes.

2 Q. Do you have any idea what the population  
3 of Grapevine, Texas, is?

4 A. No.

5 Q. I'll represent to you that according to  
6 the U.S. Census Bureau, the population of Grapevine,  
7 Texas, was 50,872 people in 2021. So that's about  
8 51,000 people.

9 MR. WAHBY: Objection; form.

10 Object to the sidebar. And move to  
11 strike.

12 BY MR. LICHTER:

13 Q. And, first, it looks like for every year  
14 since 2006, Albertsons Store 3625 dispensed more  
15 opioid pills into Grapevine than the actual number  
16 of people who live there.

17 Do you see that?

18 MR. WAHBY: Objection; form.

19 A. Yes.

20 BY MR. LICHTER:

21 Q. In looking at the year 2015, Albertsons  
22 Store 3625 dispensed 104,832 dosage units of opioids  
23 into Grapevine.

24 Do you see that?

25 A. Yes.

1           Q.     Again, in a city of about 51,000 people,  
2           that comes out to about two opioid pills that year  
3           for every person in Grapevine.

4                     Did Albertsons ever provide you any  
5           information or data to determine whether or not that  
6           level of dispensing into Grapevine is reasonable?

7                     MR. WAHBY:  Objection; form.

8                     Object to the sidebar.  And move to  
9           strike.

10          BY MR. LICHTER:

11           Q.     You can answer.

12           A.     No.

13           Q.     And over on the bottom left of the chart,  
14           it indicates Albertsons Store 3625 dispensed a grand  
15           total of 1,223,062 opioid dosage units into  
16           Grapevine from 2006 to 2021.

17                     Do you see that figure?

18           A.     Yes.

19           Q.     Okay.  Again, in a city of about 51,000  
20           people, that comes out to about 24 opioid pills per  
21           person in Grapevine.

22                     Albertsons never provided you any data  
23           or information to determine if that level is  
24           reasonable, did it?

25                     MR. WAHBY:  Objection; form.



1 Object to the sidebar.

2 Move to strike.

3 BY MR. LICHTER:

4 Q. You can answer.

5 A. Not that I recall.

6 Q. Based on the numbers we're looking at, do  
7 you have any opinion as to whether this Albertsons  
8 location was filling more opioid prescriptions than  
9 it should have?

10 MR. WAHBY: Object to the form.

11 A. Ask that question again.

12 BY MR. LICHTER:

13 Q. Based on the number -- the numbers that  
14 we're looking at here, do you have any opinion as to  
15 whether this Albertsons location was filling more  
16 opioid prescriptions than it should have?

17 MR. WAHBY: Objection; form.

18 A. No.

19 BY MR. LICHTER:

20 Q. Would additional information or data from  
21 Albertsons be helpful in determining whether or not  
22 dispensing levels that we're looking at were  
23 reasonable or unreasonable?

24 MR. WAHBY: Objection; form.

25 A. I don't know. I mean, maybe, but it

1 depends on the data and the -- yeah, I don't know.

2 BY MR. LICHTER:

3 Q. Okay. Set this one aside.

4 A. (Complied.)

5 MR. LICHTER: The next document marked  
6 as Exhibit 10.

7 (Exhibit 10 marked.)

8 BY MR. LICHTER:

9 Q. And I'll represent to you this chart we're  
10 looking at is a summary of the opioid dispensing  
11 data Albertsons produced for Store 1780 in dosage  
12 units created by Dr. Craig McCann in this  
13 litigation.

14 And the top indicates Store 1780 is  
15 located at 1000 Keller Parkway in Keller, Texas; is  
16 that right?

17 MR. WAHBY: Object. Objection; form.

18 Object to the exhibit. It's not Bates  
19 labeled. Origin unclear.

20 A. Yes.

21 BY MR. LICHTER:

22 Q. And that's located in Tarrant County,  
23 correct?

24 A. Yes.

25 Q. And you oversee Store 1780, correct?

1 A. Yes.

2 Q. And do you have any idea what the  
3 population of Keller, Texas, is?

4 MR. WAHBY: Objection; form.

5 A. No.

6 BY MR. LICHTER:

7 Q. I'll represent to you that according to  
8 the U.S. Census Bureau, population of Keller, Texas,  
9 was 45,397 people in 2021. So about 45,000 people.

10 And in looking at the chart, it  
11 appears that for every year since 2006, Albertsons  
12 Store 1780 dispensed more opioid pills into Keller  
13 than the actual number of people that lived there.

14 Do you see that?

15 MR. WAHBY: Objection; form.

16 Object to the sidebar. And move to  
17 strike.

18 A. Yes.

19 BY MR. LICHTER:

20 Q. And did Albertsons ever provide you any  
21 information or data to determine if that level of  
22 dispensing into Keller is reasonable?

23 MR. WAHBY: Objection; form.

24 A. No.

25 BY MR. LICHTER:

1 Q. Looking at the year 2015, Albertsons  
2 Store 1780 dispensed 109,103 dosage units into  
3 Keller. In a city of about 45,000 people, that's --  
4 that comes out to over two opioid pills for every  
5 person in Keller.

6 Again, Albertsons never gave you any  
7 information or data to determine whether that figure  
8 would be reasonable, did it?

9 MR. WAHBY: Objection; form.

10 Object to the sidebar.

11 Move to strike.

12 A. No.

13 BY MR. LICHTER:

14 Q. And over on the bottom left of the chart,  
15 it indicates Albertsons Store 1780 dispensed a grand  
16 total of 1,361,979 opioid dosage units into Keller  
17 from 2006 to 2021.

18 Do you see that?

19 A. Yeah -- yes.

20 Q. Again, city of about 45,000 people, that  
21 comes out to about 30 opioid pills per person into  
22 Keller in that time period.

23 Again, Albertsons never provided you  
24 any information or data to determine whether that  
25 level of dispensing would be reasonable, did it?

1 MR. WAHBY: Objection; form.

2 Object to the sidebar.

3 Move to strike.

4 A. No.

5 BY MR. LICHTER:

6 Q. Do you recall in an earlier document we  
7 looked at, an Albertsons pharmacist asked you about  
8 dispensing 150 hydrocodone pills in a month to a  
9 certain patient who requested they come from a  
10 certain manufacturer?

11 A. Yes.

12 Q. Do you recall that in your response, you  
13 told her, "At the end of the day it is about being  
14 profitable"?

15 MR. WAHBY: Objection; form.

16 A. Yes.

17 BY MR. LICHTER:

18 Q. Do you think that philosophy may have had  
19 an impact on some of the numbers we're seeing from  
20 these other Albertsons pharmacies in Tarrant County?

21 MR. WAHBY: Objection; form.

22 A. No.

23 BY MR. LICHTER:

24 Q. Do you know how pharmacy bonuses are  
25 calculated in Tarrant County for Albertsons?

1 A. Yes.

2 MR. WAHBY: Objection; form.

3 BY MR. LICHTER:

4 Q. Can you explain?

5 A. All store management is eligible for a  
6 bonus based off the sales and profit of the total  
7 store.

8 Q. And does that store management include the  
9 pharmacy managers?

10 A. Yes.

11 Q. When you say "the total store," does that  
12 include the sales from the pharmacy?

13 A. Every department.

14 Q. Including the pharmacy?

15 A. Yes.

16 Q. Does that include the sale of controlled  
17 substances?

18 A. Yes.

19 Q. Are you aware if Albertsons has any  
20 corporate monitoring for its Tarrant County  
21 pharmacies in the area of problematic doctors?

22 MR. WAHBY: Objection; form.

23 A. I'm not aware.

24 BY MR. LICHTER:

25 Q. How about corporate monitoring in Tarrant

1 County for problematic patients?

2 A. Not that I'm aware of.

3 MR. WAHBY: Objection; form.

4 BY MR. LICHTER:

5 Q. Corporate monitor in Tarrant County for  
6 red flag prescriptions?

7 MR. WAHBY: Objection; form.

8 A. Not that I'm aware of.

9 BY MR. LICHTER:

10 Q. Any corporate monitoring in Tarrant County  
11 for Trinity prescriptions?

12 A. Not that I'm aware of.

13 MR. LICHTER: I have no further  
14 questions.

15 MR. WAHBY: We'll reserve our  
16 questions until the time of trial.

17 Thank you.

18 MR. LICHTER: Does -- posing to  
19 anybody on Zoom. Mr. Frampton? Anybody have any  
20 questions for the witness?

21 MR. FRAMPTON: This is Paul Frampton.  
22 I have no questions.

23 MR. LICHTER: All right.

24 MR. WAHBY: We're off the record.

25 THE VIDEOGRAPHER: The time is

1 1:49 p.m., and we are off the record.

2

3 (The following discussion was held for  
4 administrative purposes.)

5

6 THE COURT REPORTER: Mr. Wahby, would  
7 you like the witness to read and sign?

8 MR. WAHBY: Yes.

9 THE COURT REPORTER: And you have a  
10 standing order?

11 MR. WAHBY: Yes.

12 THE COURT REPORTER: Mr. Frampton, do  
13 you have a standing order?

14 MR. FRAMPTON: No, I do not.

15 THE COURT REPORTER: Did you need a  
16 copy?

17 MR. FRAMPTON: Yes, please.

18 THE COURT REPORTER: And Mr. Lichter,  
19 I believe you have a standing order as well.

20 MR. LICHTER: Yes, we do.

21 THE COURT REPORTER: Thank you. Have  
22 a nice day, everyone.

23

24 (Hybrid deposition concluded at  
25 1:49 p.m., July 19, 2023.)



1	CHANGES AND SIGNATURE		
2	WITNESS NAME: DAVID HICKS		
3	DATE: JULY 19, 2023		
4	PAGE/LINE	CHANGE	REASON
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1 I, DAVID HICKS, have read the foregoing  
2 deposition and hereby affix my signature that same  
3 is true and correct, except as noted above.

4

5

6

\_\_\_\_\_  
DAVID HICKS

7

THE STATE OF \_\_\_\_\_)

8

COUNTY OF \_\_\_\_\_)

9

10 Before me, \_\_\_\_\_, on  
11 this day personally appeared DAVID HICKS, known to  
12 me (or proved to me under oath or through  
13 \_\_\_\_\_) (description of  
14 identity card or other document) to be the person  
15 whose name is subscribed to the foregoing instrument  
16 and acknowledged to me that they executed the same  
17 for the purposes and consideration therein  
18 expressed.

19 Given under my hand and seal of office this  
20 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

21

22

23

24

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR

25

THE STATE OF \_\_\_\_\_

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4           IN RE: NATIONAL PRESCRIPTION   § MDL NO. 2804  
5           OPIATE LITIGATION               §  
6   § CASE NO.:  
7   § 1:17-MD-2804  
8   §  
9           THIS DOCUMENT RELATES TO:       § JUDGE DAN AARON  
10           "Case Track Nine"               § POLSTER

11                   \*\*\*\*\*

12                   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
13                   CONFIDENTIALITY REVIEW  
14                   HYBRID REALTIMED/VIDEOTAPED DEPOSITION OF

15                   DAVID HICKS  
16                   JULY 19, 2023

17                   \*\*\*\*\*

18                   CERTIFIED STENOGRAPHIC  
19                   COURT REPORTER'S CERTIFICATE

20           I, Karen L. D. Schoeve, Registered Diplomate  
21           Reporter, Certified Realtime Reporter, and Realtime  
22           Systems Administrator, residing in the State of  
23           Texas, do hereby certify that the foregoing  
24           proceedings were reported by me and that the  
25           foregoing transcript constitutes a full, true, and  
             correct transcription of my stenographic notes, to

1 the best of my ability and hereby certify to the  
2 following:

3 By agreement of all attending attorneys, the  
4 witness, DAVID HICKS, was duly sworn by the officer  
5 and that the transcript of the oral deposition is a  
6 true record of the testimony given by the witness;

7 That the original deposition was delivered to  
8 Jay M. Lichter, custodial attorney;

9 That a copy of this certificate was served on  
10 all parties and/or the witness shown herein on  
11 July 25, 2023.

12 I further certify that the signature of the  
13 witness was requested by the witness or a party  
14 before the completion of the deposition and the  
15 signature is to be returned within 30 days from date  
16 of receipt of the transcript.

17 If returned, the attached Changes and  
18 Signature Page contains any changes and the reasons  
19 therefor.

20 That pursuant to information given to the  
21 deposition officer at the time said testimony was  
22 taken, the following includes counsel for all  
23 parties of record:

24  
25

1 FOR PLAINTIFF TARRANT COUNTY, TEXAS:

2 JAY M. LICHTER, ESQUIRE  
3 BARON & BUDD, P.C.

4 FOR DEFENDANT ALBERTSONS:

5 PETER S. WAHBY, ESQUIRE  
6 GREENBERG TRAURIG, LLP

7 FOR DEFENDANT KROGER:

8 PAUL L. FRAMPTON, JR., ESQUIRE  
9 ATKINSON & FRAMPTON, PLLC

10 I further certify that I am neither counsel  
11 for, related to, nor employed by any of the parties  
12 in the action in which this proceeding was taken,  
13 and further that I am not financially or otherwise  
14 interested in the outcome of the action.

15 Subscribed and sworn to on this the 25th day  
16 of July, 2023.

17  
18  
19 \_\_\_\_\_  
20 Karen L.D. Schoeve, RDR, CRR  
21 Realtime Systems Administrator  
22 NCRA Exp. Date: 09-30-24  
23 Litigation Services  
24 Firm Registration No. 726  
25 3960 Howard Hughes Parkway, Suite 700  
Las Vegas, Nevada 89169  
T: 877.370.3777  
F: 917.591.5672